

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

FILED

06/26/2017

Clerk of the
Appellate Courts

MARCUS JOHNSON v. STATE OF TENNESSEE

Appeal from the Criminal Court for Knox County
No. 107042 Steven Wayne Sword, Judge

No. E2016-00758-CCA-R3-PC

The pro se Petitioner, Marcus Johnson, appeals as of right from the Knox County Criminal Court's order summarily denying his petition for post-conviction relief. The State has filed a motion requesting that this court affirm the trial court's denial of relief pursuant to Rule 20 of the Rules of the Tennessee Court of Criminal Appeals. Following our review, we conclude that the State's motion is well-taken and affirm the judgment of the Knox County Criminal Court.

Tenn. R. App. P. 3; Judgment of the Criminal Court Affirmed
Pursuant to Rule 20, Rules of the Court of Criminal Appeals.

NORMA MCGEE OGLE, J., delivered the opinion of the Court, in which JAMES CURWOOD WITT, JR., and ROBERT H. MONTGOMERY, JR., JJ., joined.

Marcus Johnson, Pikeville, Tennessee, Pro Se.

Herbert H. Slatery III, Attorney General and Reporter; Zachary T. Hinkle, Assistant Attorney General; Charme D. Allen, District Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

On April 7, 2011, the Petitioner pleaded guilty to one count of sale of cocaine and received an agreed sentence of 10 years to be served on probation. In December 2011, the trial court revoked his probation and ordered him to serve his sentence in confinement. This court affirmed the revocation on appeal. *State v. Marcus Terrell Johnson*, No. E2012-00015-CCA-R3-CD, 2012 WL 3651129 (Tenn. Crim. App. Aug. 27, 2012), *perm. app. denied* (Tenn. Nov. 27, 2012). The Petitioner then filed an untimely petition for post-conviction relief, the denial of which was affirmed on appeal.

Marcus Johnson v. State, No. E2013-01464-CCA-R3-PC, 2014 WL 1118018 (Tenn. Crim. App. Mar. 20, 2014), *perm. app. denied* (Tenn. June 24, 2014).

In January 2016, the Petitioner filed a second petition for post-conviction relief alleging various constitutional violations including the ineffective assistance of counsel and an involuntary guilty plea. On January 12, 2016, the trial court summarily dismissed the petition. The Petitioner filed an untimely notice of appeal on April 6, 2016.

Initially, the State argues that this appeal should be dismissed due to an untimely filed notice of appeal. We acknowledge that the pro se Petitioner experienced considerable confusion because he was proceeding on appeal with several cases simultaneously. Therefore, we conclude that the timely filing of the notice of appeal should be waived in this matter. Tenn. R. App. P. 4(a).

Turning now to the substantive claim of the propriety of the trial court's summary dismissal, we note that the Post-Conviction Procedure Act contemplates the filing of only one petition for post-conviction relief and provides for the summary dismissal of a subsequent petition if a previous petition has been filed and resolved on the merits. Tenn. Code Ann. § 40-30-102(c). The Petitioner filed a previous petition for post-conviction relief, the denial of which this court affirmed in 2014. Accordingly, the Petitioner is barred from filing a second petition. Furthermore, the allegations in the petition would not warrant treating the pleading as a motion to reopen a prior petition for post-conviction relief. *See* Tenn. Code Ann. § 40-30-117(a). Therefore, the trial court was obliged to dismiss summarily the petition for post-conviction relief.

Accordingly, we affirm the judgment of the Knox County Criminal Court pursuant to Rule 20 of the Rules of the Tennessee Court of Criminal Appeals.

NORMA MCGEE OGLE, JUDGE