

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs February 4, 2020

FILED

06/19/2020

Clerk of the
Appellate Courts

REGINALD MCWILLIAMS v. STATE OF TENNESSEE

Appeal from the Criminal Court for Shelby County
No. 16-05484 Paula L. Skahan, Judge

No. W2019-00935-CCA-R3-PC

The Petitioner, Reginald McWilliams, acting pro se, appeals from the Shelby County Criminal Court's denial of post-conviction relief for failure to prosecute on the part of the Petitioner. Because the record does not establish an abuse of process, we reverse the judgment of the post-conviction court and remand this matter for proceedings consistent with this opinion.

**Tenn. R. App. P. 3, Appeal as of Right; Judgment of the Criminal Court Reversed
and Remanded**

CAMILLE R. MCMULLEN, J., delivered the opinion of the court, in which JOHN EVERETT WILLIAMS, P.J., and ALAN E. GLENN, J., joined.

Reginald McWilliams, Memphis, Tennessee, Pro Se.

Herbert H. Slatery III, Attorney General and Reporter; Clark B. Thornton, Senior Assistant Attorney General; Amy P. Weirich, District Attorney General; and Leslie Byrd, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

Based on the limited record before us, it appears that on May 24, 2017, the Petitioner, aided by counsel, entered a guilty plea to solicitation of aggravated burglary and received an eight month sentence. On March 5, 2018, the Petitioner filed a pro se petition for post-conviction relief, alleging, inter alia, that he was denied effective assistance of counsel and that his guilty plea was forced. On April 16, 2018, an order was entered allowing the Petitioner's attorney of record to withdraw as counsel based upon the Petitioner's indication "that he want[ed] to represent himself in this post-

conviction matter.” On the same day, an order of recusal was entered by the trial court based on a conflict of interest. The Petitioner’s case was then reassigned to three other judges, each of whom also entered orders of recusal based upon a conflict of interest. A fourth judge was eventually assigned to review the merits of this case. On March 21, 2019, the State filed a response to the Petitioner’s petition conceding that “the nature of the allegations as to the claim of ineffective assistance of counsel do require an evidentiary hearing.”

On May 1, 2019, the trial court entered an order dismissing the Petitioner’s petition for post-conviction relief finding as follows:

Petitioner’s petition for post-conviction relief is dismissed for failure to prosecute. Petitioner refused counsel on this matter and insisted on proceeding pro se. This matter was initially set for report in this Court on September 4, 2018 and [Petitioner] failed to appear. The Court sent a letter to [P]etitioner informing him of the next report date. The [P]etitioner then requested a hearing and the matter was set for hearing May 1, 2019. Petitioner failed to appear for the hearing. Thus, this matter is hereby dismissed for failure to present [P]etitioner’s claims.

On May 28, 2019, the Petitioner filed a timely notice of appeal, and this case is now properly before this Court for our review.

ANALYSIS

We acknowledge, as pointed out by the State, that the Petitioner does not challenge the post-conviction court’s dismissal of his petition for post-conviction relief based upon a failure to prosecute. We further understand the position of the State in contending that the post-conviction court properly dismissed the Petitioner’s case for failure to prosecute because the Petitioner “abused the post-conviction process and . . . forfeited [the] statutory remedy.” However, we are unable to conclude that twice failing to appear for a court setting constitutes an abuse of the post-conviction process. See Williams v. State, 831 S.W.2d 281, 283 (Tenn. 1992) (noting that dismissal of the action for failure to prosecute is proper based upon an abuse of the post-conviction process by filing successive petitions, seeking repeated withdrawals, or is otherwise acting in bad faith). Additionally, when a petition for post-conviction relief is dismissed without a hearing, as in this case, the order of dismissal shall set forth the post-conviction court’s findings of fact and conclusions of law. See T.C.A. §40-30-106(f); Charles Ritter v. State, No. E2003-03016-CCA-R3PC, 2004 WL 2309140, at *1 (Tenn. Crim. App. Oct. 14, 2004); Almeer Nance v. State, No. E2005-02265-CCA-R3-PC, 2006 WL 1575110, at *1 (Tenn. Crim. App. June 9, 2006) (reversing post-conviction court’s dismissal of

petition because argument of counsel in brief that petition was dismissed based on multiple delays was not evidence). If there is insufficient evidence in the record to support the post-conviction court's dismissal, then the case must be remanded for an evidentiary hearing. Almeer Nance, 2006 WL 1575110, at *3; Charles Ritter, 2004 WL 2309140, at *2. The order dismissing the action does not establish that the Petitioner acted in bad faith or that he relinquished his right to an evidentiary hearing on the merits of his petition. Accordingly, we reverse the judgment of the post-conviction court and remand this matter for proceedings consistent with this opinion.

CONCLUSION

For the aforementioned reasons, we reverse and remand the judgment of the post-conviction court for an evidentiary hearing on the merits of the petition for post-conviction relief.

CAMILLE R. MCMULLEN, JUDGE