

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

JUNE 1997 SESSION

<p>FILED</p> <p>September 2, 1997</p> <p>Cecil Crowson, Jr. Appellate Court Clerk</p>
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JERRY W. HARDIN,)	NO. 01C01-9607-CC-00326
)	
Appellant)	HUMPHREYS COUNTY
)	
V.)	HON. ROBERT E. BURCH, JUDGE
)	
STATE OF TENNESSEE,)	(Post-Conviction)
)	
Appellee)	
)	

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OPINION FILED: _____

AFFIRMED

William M. Barker, Judge

Opinion

The Appellant, Jerry W. Hardin, appeals as of right the Humphreys County Circuit Court's dismissal of his petition for post-conviction relief. In 1977, the Appellant was convicted of robbery with a deadly weapon and, pursuant to a plea agreement with the State, was sentenced to ten years incarceration in the Tennessee Department of Correction. In September, 1992, more than five years after the robbery sentence expired, the Appellant was sentenced for possession of a firearm by a convicted felon in the United States District Court for the Western District of Tennessee. The United States District Court used the robbery conviction to enhance the Appellant's sentence. The Appellant filed this petition for post-conviction relief to overturn the Humphrey County robbery conviction in order to have his sentence in the federal penitentiary reduced. On April 3, 1996, without an evidentiary hearing, the trial court dismissed the petition, ruling that it was barred by the statute of limitations.

Pursuant to the now-repealed Post-Conviction Procedure Act, the statute of limitation applicable to the Appellant's post-conviction claims was three years.¹ Tenn. Code Ann. § 40-30-102 (repealed 1995). That three-year period began running on July 1, 1986, the effective date of the statute. The last day on which the Appellant could have filed such a petition was in July of 1989. See e.g. State v. Mullins, 767 S.W.2d 668, 669 (Tenn. Crim. App. 1988); Smith v. State, 757 S.W.2d 683, 685 (Tenn. Crim. App. 1988); State v. Masucci, 754 S.W.2d 90, 91 (Tenn. Crim. App. 1988); Abston v. State, 749 S.W.2d 487, 488 (Tenn. Crim. App. 1988). The Appellant's petition was filed in March of 1996, more than six years after the statute expired. Consequently, the trial court properly dismissed the Appellant's petition.

Any contention by the Appellant that the new Post-Conviction Procedure Act, effective May 10, 1995, provided him with a one-year window of opportunity within which to file his post-conviction petition is meritless. Similar attempts to circumvent

¹Prior to the enactment of the 1986 Post-Conviction Procedure Act, no statute of limitations for post-conviction applications existed.

the statute of limitations in this manner have been previously rejected by panels of this Court. See Roy Barnett v. State, C.C.A. No. 03C01-9512-CV-00394 (Tenn. Crim. App., Knoxville, Feb. 20, 1997); Stephen Koprowski v. State, C.A.A. No. 03C01-9511-CC-00365 (Tenn. Crim. App., Knoxville, Jan. 28, 1997); Johnny L. Butler v. State, C.C.A. No. 02C01-9509-CR-00289 (Tenn. Crim. App., Jackson, Dec. 2, 1996). But see Arnold Carter v. State, C.C.A. No. 03C01-9509-CC-00270 (Tenn. Crim. App., Knoxville, July 11, 1996).

Accordingly, the trial court's dismissal of the Appellant's petition for post-conviction relief is affirmed.

WILLIAM M. BARKER, JUDGE

CONCUR:

JOE B. JONES, PRESIDING JUDGE

THOMAS T. WOODALL, JUDGE