



16, 1996. Accordingly, his petition was barred by the statute of limitations.<sup>2</sup>

The petitioner, however, claims that the application of the one-year statute of limitations in the 1995 Post-Conviction Act violates his right to constitutional due process. The petitioner argues that one year is not enough time in which to collaterally attack his sentence and that he had a vested right to the old three year statute of limitations. Faced with this very issue, a panel of this Court recently found that the one-year statute of limitations, as applied, does not violate the constitutional right to due process. Holston v. State, No. 02C01-9609-CR-00298 (Tenn. Crim. App., July 28, 1997) (citing Burford v. State, 845 S.W.2d 204 (Tenn. 1992)).

Moreover, in Carter v. State, 952 S.W.2d 417 (Tenn. 1997), our supreme court recognized situations in which the new one year statute of limitations would expire before the prior three year statute. The court held that the enabling provision of the Act, which granted persons in these situations until May 10, 1996, in which to file a petition for post-conviction relief, adequately protected the rights of these persons. Id. at 420. The petitioner's claim is without merit.

The petitioner also claims that the statute of limitations should be tolled in this case despite Tennessee Code Annotated section 40-30-202(a). In support of this claim, the petitioner relies upon Watkins v. State, 903 S.W.2d 302 (Tenn. 1995), which held under the old Post-Conviction Procedure that the tolling provision in section 28-1-106 applied to post-conviction cases. Like the court in Holston, however, we do not need to decide whether the new Act properly eliminated all tolling provisions. Because the petitioner alleges that he was mentally incompetent prior to or during the trial, but not during the running of the post-conviction statute of limitations, the petitioner would not benefit from the tolling statute. This claim is also without merit.

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<sup>2</sup> Because the old three year statute of limitations had not expired on the effective date of the new act, the petitioner had until May 10, 1996, in which to file his petition for post-conviction relief. See Compiler's Notes, T.C.A. § 40-30-201 (1997); Maney v. State, 03C01-9612-CR-00470 (Tenn. Crim. App., Oct. 10, 1997). The petition in this case, however, was filed beyond that date.

We conclude, therefore, that the trial court did not err in dismissing the petitioner's petition for post-conviction relief. Accordingly, it is hereby ORDERED that the judgment of the trial court is affirmed in accordance with Rule 20, Rules of the Court of Criminal Appeals.

Enter.

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CURWOOD WITT, JUDGE

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JOE B. JONES, PRESIDING JUDGE

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JERRY L. SMITH, JUDGE