

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

**FILED**

JASON JERMAINE DOBBINS,

Appellant,

VS.

STATE OF TENNESSEE,

Appellee.

)

) C.C.A. NO. 01C01-9708-CC-00370  
) June 19, 1998  
) MAURY COUNTY  
) (No. 9534 Below) Cecil W. Crowson  
) Appellate Court Clerk  
) The Hon. Jim T. Hamilton  
)  
) (Dismissal of Post-Conviction Petition)  
) AFFIRMED PURSUANT TO RULE 20

**ORDER**

This matter is before the Court upon the state's motion requesting that the judgment in the above-styled cause be affirmed pursuant to Rule 20, Tennessee Court of Criminal Appeals Rules. Upon reviewing the record, we find that the trial court properly held that the appellant's petition for post-conviction relief was barred by the one-year statute of limitation. Accordingly, we affirm the judgment pursuant to Rule 20.

A brief procedural history is necessary. The appellant pled guilty to second-degree murder on March 27, 1995. At the time, the Post-Conviction Procedure Act provided that a petitioner under sentence of a court of Tennessee had three years from the date of the final action of the highest state appellate court to which an appeal is taken to file a petition for post-conviction relief. See T.C.A. § 40-30-102 (repealed 1995).

The appellant filed a petition for post-conviction relief on May 21, 1996. This was after the new Post-Conviction Procedure Act, effective May 10, 1995, had been enacted, reducing the statute of limitation to one year. See T.C.A. § 40-30-202(a). Counsel was appointed to represent the appellant, and an amended petition was filed on December 11, 1996. After a hearing on the merits, the trial court denied relief on March 14, 1997. A notice of appeal was filed, and the case proceeded to this Court. The appellant filed a brief, and in response, the state filed a motion to affirm the judgment.

While on the face of the record it appeared that the appellant failed to file his petition for post-conviction relief within the one-year statute of limitation, the record did not reflect that the trial court considered the statute of limitation issue, and consequently, the appellant was not given an opportunity to show that one or more of the enumerated exceptions set forth in T.C.A. § 40-30-202(b) would be applicable. Accordingly, this Court remanded the matter to the trial court for further proceedings.

After a second hearing, the trial court entered an order dismissing the appellant's post-conviction petition. The trial court found that the petition was filed outside the one-year statute of limitation and that none of the exceptions to the statute applied in the instant matter.

The appellant concedes that his petition was filed outside the one-year statute of limitation and that none of the enumerated exceptions set forth in T.C.A. § 40-30-202(b) are applicable. Instead, on appeal, he contends that the original three-year statute of limitation should apply.

Under T.C.A. § 40-30-202(a), a petitioner must petition for post-conviction relief within one year of the date of the final action of the highest state appellate court to which an appeal was taken or, if no appeal was taken, within one year of the date on which the judgment became final. The Compiler's Notes to T.C.A. § 40-30-201 indicate that the 1995 Post-Conviction Act governs all petitions for post-conviction relief filed after May 10, 1995, and that "any person having ground for relief recognized under this part shall have at least one (1) year from May 10, 1995, to file a petition or a motion to reopen a petition under this part." Moreover, our Supreme Court has held that the enabling provision of the Act, which includes the provision granting persons such as the appellant until May 10, 1996, to file a petition, adequately protected the rights of petitioners. Carter v. State, 952 S.W.2d 417, 420 (Tenn. 1997). This issue is without merit.

IT IS, THEREFORE, ORDERED that the judgment is affirmed pursuant to Rule 20, Tennessee Court of Criminal Appeals Rules. The appellant being indigent, costs are taxed to the state.

ENTER, this the \_\_\_\_ day of June, 1998.

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DAVID H. WELLES, JUDGE

CONCUR:

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JERRY L. SMITH, JUDGE

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THOMAS T. WOODALL, JUDGE