

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE  
Assigned on Briefs October 25, 2023

FILED

10/30/2023

Clerk of the  
Appellate Courts

**RICHARD WILLIAMS, III v. STATE OF TENNESSEE**

**Appeal from the Criminal Court for Knox County  
No. 119182 Steven W. Sword, Judge**

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**No. E2022-01768-CCA-R3-PC**

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A Knox County jury convicted the Petitioner, Richard Williams, III, of several offenses, including attempted first degree murder. He later filed a petition for post-conviction relief, asserting that he was denied the effective assistance of counsel. The post-conviction court dismissed the petition after finding that it was untimely and that principles of due process did not toll the running of the statute of limitations. On appeal, the Petitioner argues that the post-conviction court did not adequately consider the impact of the COVID-19 pandemic on his ability to access the prison library and, therefore, to timely file his petition. We respectfully disagree and affirm the judgment of the post-conviction court.

**Tenn. R. App. P. 3 Appeal as of Right;  
Judgment of the Criminal Court Affirmed**

TOM GREENHOLTZ, J., delivered the opinion of the court, in which ROBERT L. HOLLOWAY, JR., and MATTHEW J. WILSON, JJ., joined.

Bailey M. Harned, Knoxville, Tennessee, for the appellant, Richard Williams, III.

Jonathan Skrmetti, Attorney General and Reporter; Benjamin A. Ball, Senior Assistant Attorney General; Charme P. Allen, District Attorney General; and TaKisha M. Fitzgerald, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

**FACTUAL BACKGROUND**

A Knox County jury convicted the Petitioner of two counts of attempted first degree murder, one count of attempted first degree murder where the victim suffered serious bodily injury, and two counts of employing a firearm during the commission of a dangerous

felony. The trial court sentenced the Petitioner to serve an effective sentence of thirty-six years. This Court affirmed the Petitioner's convictions on August 28, 2019, and our supreme court denied permission to appeal on January 15, 2020. *See State v. Williams*, No. E2018-01460-CCA-R3-CD, 2019 WL 4058691 (Tenn. Crim. App. Aug. 28, 2019), *perm. app. denied* (Tenn. Jan. 15, 2020).

On June 25, 2021, the Petitioner filed a *pro se* petition for post-conviction relief, alleging that he was denied the effective assistance of counsel. In a preliminary order, the post-conviction court observed that the petition was not timely filed. However, noting that the Petitioner sought due process tolling of the statute of limitations, the court appointed counsel to "first demonstrate sufficient grounds to justify the delay in filing."

On November 17, 2022, the post-conviction court held a hearing to address the timeliness of the petition. The Petitioner was the only witness, and he testified that

[a]s the world went on lockdown, penitentiaries also went on lockdown, too, maybe a couple months at a time. And with our librarians being civilians, if they were not at work, then the libraries would be closed and we wouldn't have access to the libraries. So, like I said, it would be months at a time where we would be on lockdown or we just wouldn't have access to the libraries.

The Petitioner asserted that he needed access to the library so that he could "research case laws" and "get some information on [his] case." He claimed to have filed his petition "immediately, as soon as [he] could," after "the libraries reopened."

Following the hearing, the post-conviction court dismissed the petition by a written order entered on November 21, 2022. The court found that the one-year statute of limitations began to run when the supreme court denied the Petitioner's application for permission to appeal on January 15, 2020. The court also found that the petition for post-conviction relief was delivered for filing on June 22, 2021, and subsequently filed on June 25, 2021. As the court noted, "[e]ach of these dates [is] over five months beyond the one-year statute of limitations for post-conviction relief."

With respect to whether due process principles tolled the statute of limitations, the court found that the Petitioner did not pursue his rights diligently. Although the Petitioner asserted that he did not have access to the prison law library because of the pandemic, the post-conviction court found that the Petitioner "had a least two months before the pandemic even began." The court further noted, "[A]ssuming that [the library] was closed for six months, [the Petitioner] would have had four more months in which to file the petition."

The Petitioner then filed a timely notice of appeal on December 20, 2022. In this appeal, the Petitioner argues that the post-conviction court erred in finding that he failed to exercise diligence in filing his petition. He asserts that the supreme court’s mandate was issued near the beginning of the pandemic and that “[o]f his twelve-month filing period, ten of those months were affected by the pandemic and the resultant closures.” He also argues that “as soon as he had ready access to the facility’s library[,] he began working on his petition” and that his “timeline is consistent with the vaccine rollout and the gradual return to normalcy.” On our review, we respectfully disagree that due process principles tolled the post-conviction statute of limitations, and we affirm the judgment of the post-conviction court.

## STANDARDS OF APPELLATE REVIEW

Our supreme court has recognized that “the first question for a reviewing court on any issue is ‘what is the appropriate standard of review?’” *State v. Enix*, 653 S.W.3d 692, 698 (Tenn. 2022). In this case, the issue is whether the post-conviction petition was timely filed within the one-year statute of limitations and, if not, whether principles of due process tolled the running of the statute of limitations. The first question is one of law that we review under a de novo standard of review. *See, e.g., McCoy v. State*, No. W2019-00574-CCA-R3-PC, 2020 WL 1227304, at \*1 (Tenn. Crim. App. Mar. 11, 2020), *no perm. app. filed*. In addition, “[i]ssues regarding whether due process required the tolling of the post-conviction statute of limitations are mixed questions of law and fact and are, therefore, subject to de novo review.” *Whitehead v. State*, 402 S.W.3d 615, 621 (Tenn. 2013). “The post-conviction petitioner ‘bears the burden of pleading and proving that the statute of limitations should be tolled on due process grounds.’” *Morris v. State*, No. M2022-00926-CCA-R3-PC, 2023 WL 3912895, at \*6 (Tenn. Crim. App. June 9, 2023) (quoting *Herbst v. State*, No. M2014-01918-CCA-R3-PC, 2015 WL 4575140, at \*3 (Tenn. Crim. App. July 30, 2015)), *no perm. app. filed*.

## ANALYSIS

The Tennessee Post-Conviction Procedure Act (“the Act”) provides an avenue for relief “when the conviction or sentence is void or voidable because of the abridgment of any right guaranteed by the Constitution of Tennessee or the Constitution of the United States.” Tenn. Code Ann. § 40-30-103. A post-conviction petitioner has the burden of proving his or her allegations of fact with clear and convincing evidence. *Id.* § 40-30-110(f). For evidence to be clear and convincing, “it must eliminate any ‘serious or substantial doubt about the correctness of the conclusions drawn from the evidence.’” *Arroyo v. State*, 434 S.W.3d 555, 559 (Tenn. 2014) (quoting *State v. Sexton*, 368 S.W.3d 371, 404 (Tenn. 2012)).

In general, “a person in custody under a sentence of a court of this state must petition for post-conviction relief under this part within one (1) year of the date of the final action of the highest state appellate court to which an appeal is taken[.]” Tenn. Code Ann. § 40-30-102(a). Our supreme court has recognized that “the one-year statutory period is an element of the right to file a post-conviction petition and that it is not an affirmative defense that must be asserted by the State.” *State v. Nix*, 40 S.W.3d 459, 464 (Tenn. 2001), *abrogated on other grounds by Reid ex rel. Martiniano v. State*, 396 S.W.3d 478, 511-13 (Tenn. 2013). Indeed, the Act expressly provides that “the one-year limitations period is an element of the right to file the action and is a condition upon its exercise.” Tenn. Code Ann. § 40-30-102(a). Importantly, “[g]iven the post-conviction statute’s language conferring jurisdictional import to the timely filing of a petition, it is essential that the question of timeliness be resolved before any adjudication on the merits of the petitioner’s claims may properly occur.” *Saulsberry v. State*, No. W2002-02538-CCA-R3-PC, 2004 WL 239767, at \*1 (Tenn. Crim. App. Feb. 9, 2004) (citing Tenn. Code Ann. § 40-30-102(b)), *perm. app. denied* (Tenn. June 1, 2004).

In this case, the “final action of the highest state appellate court” occurred when the supreme court denied the Petitioner’s application for permission to appeal on January 15, 2020. Thus, the petition could have been timely filed only if it were filed on or before January 15, 2021. *See Pruitt v. State*, No. W2021-01214-CCA-R3-PC, 2022 WL 3337104, at \*2 (Tenn. Crim. App. Aug. 12, 2022), *no perm. app. filed*. However, the petition was not delivered to the appropriate prison official for filing under the “mailbox rule” until more than five months later on June 22, 2021. *See* Tenn. R. Sup. Ct. 28, § 2(G) (noting that an incarcerated person may timely file a post-conviction petition by delivering it “to the appropriate individual at the correctional facility within the time fixed for filing”). The petition is untimely on its face.

No party disputes this conclusion. Instead, the parties disagree as to whether principles of due process toll the running of the statute of limitations. We note that if a defendant has “been deprived by his counsel of a reasonable opportunity to seek post-conviction relief, due process considerations may have tolled the limitations period during this time when the appellee was unable to seek such relief.” *Williams v. State*, 44 S.W.3d 464, 465 (Tenn. 2001). As such, “a post-conviction petitioner is entitled to due process tolling of the one-year statute of limitations upon a showing (1) that he or she has been pursuing his or her rights diligently, and (2) that some extraordinary circumstance stood in his or her way and prevented timely filing.” *Bush v. State*, 428 S.W.3d 1, 22 (Tenn. 2014) (citing *Whitehead*, 402 S.W.3d at 631). Of course, “[i]n every case in which we have held the statute of limitations is tolled, the pervasive theme is that circumstances *beyond a petitioner’s control* prevented the petitioner from filing a petition for post-conviction relief within the statute of limitations.” *Smith v. State*, 357 S.W.3d 322, 358 (Tenn. 2011) (emphasis in original).

As an initial matter, we reject the premise of the Petitioner’s claim: that access to a law library is essential to, and a prerequisite for, the timely filing of a post-conviction petition. It is not. Indeed, we have recognized that a petitioner is not entitled to due process tolling even when he or she “had *no* access to a law library containing Tennessee law, counsel, or other knowledgeable inmates while in prison.” *Wooten v. State*, No. W2019-01228-CCA-R3-PC, 2020 WL 1491376, at \*4 (Tenn. Crim. App. Mar. 26, 2020) (emphasis added) (citing *Phillips v. State*, 890 S.W.2d 37, 38 (Tenn. Crim. App. 1994)), *perm. app. denied* (Tenn. Aug. 11, 2020). As such, the Petitioner has failed to show the presence of a circumstance beyond his control that prevented him from filing a timely post-conviction petition.

In any event, even if a circumstance beyond the Petitioner’s control prevented him from filing a timely petition, he has failed to show that he acted with reasonable diligence in filing his petition more than five months late. In the context of the COVID-19 pandemic, limited library access cannot be used as “an excuse” for a late-filed post-conviction petition. *Cf. Foster v. State*, No. E2022-00787-CCA-R3-PC, 2023 WL 3295683, at \*4 (Tenn. Crim. App. May 8, 2023), *perm. app. denied* (Tenn. Sept. 11, 2023) (rejecting due process tolling, in part, when the trial court found that “lack of library access was an ‘excuse rather than a justification.’”). Instead, a generalized claim that the pandemic restricted library access, even for a significant portion of the limitations period, will not result in due process tolling where the “petitioner did not specify *how* those precautions prohibited him from filing his petition on time.” *Barnett v. State*, No. M2021-00554-CCA-R3-PC, 2022 WL 2277146, at \*4 (Tenn. Crim. App. June 23, 2022) (emphasis added), *perm. app. denied* (Tenn. Nov. 16, 2022).

To that end, we have rejected due process tolling claims where the evidence also showed that

- the petitioner had at least some library access during the limitations period, even if intermittently, *Wright v. State*, No. M2022-00416-CCA-R3-PC, 2023 WL 2034258, at \*4 (Tenn. Crim. App. Feb. 16, 2023), *no perm. app. filed*;
- the petitioner was otherwise “able to send and receive mail, make phone calls, and request legal help,” *Cole v. State*, No. W2021-00973-CCA-R3-PC, 2022 WL 1077313, at \*3 (Tenn. Crim. App. Apr. 11, 2022), *no perm. app. filed*;
- the petitioner was able to make written requests for access to legal materials or library access, and these requests were not denied, either before or after the pandemic, *Blevins v. State*, No. E2021-01312-CCA-R3-PC, 2022 WL

3226793, at \*5 (Tenn. Crim. App. Aug. 10, 2022), *perm. app. denied* (Tenn. Dec. 14, 2022); or

- despite temporary lockdowns, the petitioner could “access legal resources enough to conduct research” and draft a petition, *Wren v. State*, No. W2021-00485-CCA-R3-PC, 2022 WL 1499490, at \*3 (Tenn. Crim. App. May 11, 2022), *no perm. app. filed*.

In this case, the Petitioner offered no proof other than his uncorroborated and generalized testimony that library access was restricted. However, even assuming that *some* library access was restricted, as the post-conviction court did, the Petitioner did not identify *how* this restriction affected his ability to file a post-conviction petition within the statute of limitations. For example, the Petitioner did not identify what specific documents or legal authorities he needed from the library to complete his post-conviction petition. He also failed to establish what particular legal authorities were necessary to avoid summary dismissal of his petition without an opportunity to amend it. Tenn. Code Ann. § 40-30-106(d); Tenn. Sup. Ct. R. 28, § 6(B)(4)(a), (b).

Moreover, even if legal materials were needed to avoid summary dismissal, the Petitioner did not show that he could not access these legal materials in other ways, such as through the mail or telephone. He also failed to show that he was unable to secure legal counsel or other assistance during the times he claimed the library was closed.

Simply stated, no evidence establishes that the Petitioner’s five-month delay in filing a post-conviction petition was due, in any part, to the lack of library access. As such, even if restricted library access could constitute a circumstance beyond the Petitioner’s control that prevented a timely filing of his petition—and it does not—we conclude that the Petitioner has failed to show that he pursued his rights diligently. Accordingly, the Petitioner is not entitled to due process tolling of the post-conviction statute of limitations.

## CONCLUSION

In summary, we hold that the Petitioner filed his post-conviction petition beyond the statute of limitations and that due process principles did not toll the limitations period. We respectfully affirm the judgment of the post-conviction court dismissing the petition.

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TOM GREENHOLTZ, JUDGE