

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
June 6, 2023 Session

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SAID LAGHRAB v. STATE OF TENNESSEE

Appeal from the Circuit Court for Fayette County
No. 14-CR-155 J. Weber McCraw, Judge

No. W2022-00736-CCA-R3-PC

The Petitioner, Said Laghrab, pled guilty in the Fayette County Circuit Court to aggravated assault and received a four-year sentence. Seven years later, he filed a petition for post-conviction relief, and the post-conviction court summarily dismissed the petition as untimely. Based upon the oral arguments, the record, and the parties' briefs, we conclude that the Petitioner has not shown he is entitled to due process tolling of the statute of limitations and affirm the post-conviction court's dismissal of the petition.

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

JOHN W. CAMPBELL, SR., J., delivered the opinion of the court, in which J. ROSS DYER and TOM GREENHOLTZ, JJ., joined.

Seth M. Segraves (on appeal) and Christopher Blodgett (at hearing), Memphis, Tennessee, for the appellant, Said Laghrab.

Jonathan Skrmetti, Attorney General and Reporter; Jonathan H. Wardle, Senior Assistant Attorney General; Mark E. Davidson, District Attorney General; and Falen Chandler, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTS

The record reflects that the Petitioner is from Tunisia. In February 2015, he pled guilty to aggravated assault by strangulation, a Class C felony, and received a partially-suspended sentence of four years. On April 21, 2022, counsel for the Petitioner filed a petition for post-conviction relief, claiming that the Petitioner received the ineffective assistance of counsel because trial counsel did not advise the Petitioner about the

deportation consequences of his guilty plea as required by *Padilla v. Kentucky*, 559 U.S. 1 (2010).

The Petitioner contended as follows in the petition: In 2017, he began the process of renewing his green card and became aware of his deportable status for the first time. He consulted his immigration attorney, who advised him that he was deportable because he pled guilty to aggravated assault in 2015 and referred him to a criminal defense attorney. The criminal defense attorney then “incorrectly informed [the Petitioner] that nothing could be done about [his] conviction” and advised him to leave the country. The Petitioner’s immigration attorney also advised him to leave the country. The Petitioner did not know he could file a petition for post-conviction relief and left the United States for Tunisia in 2017. He returned to the United States in 2021, retained counsel in February 2022, and finally learned that he could challenge the voluntariness of his guilty plea by filing a petition for post-conviction relief. The Petitioner asserted that the one-year statute of limitations for filing the petition should be tolled because trial counsel did not inform him of any deportation consequences and because the attorneys he consulted after his guilty plea incorrectly told him that “nothing could be done.”

On April 22, 2022, the post-conviction court entered a preliminary order, directing the State to file a response to the petition. On May 3, 2022, the State filed a motion to dismiss on the basis that the petition was barred by the one-year statute of limitations and asserting that the statute of limitations should not be tolled because none of the exceptions in Tennessee Code Annotated § 40-30-102(b) applied to the Petitioner.

On May 9, 2022, the post-conviction court entered an order granting the State’s motion to dismiss. On May 25, 2022, the Petitioner filed a motion to reconsider, claiming that “extraordinary circumstances” for tolling the statute of limitations existed in this case because he was unfamiliar with the English language and our criminal justice system; was not warned by trial counsel, the prosecutor, or the trial court that his guilty plea would render him deportable; and was not informed by trial counsel about the statute of limitations for filing a post-conviction petition.

The post-conviction court held a brief hearing on the motion to reconsider on May 31, 2022. At the outset of the hearing, post-conviction counsel advised the court that the Petitioner was prepared to call witnesses and present evidence that trial counsel failed to warn him that pleading guilty would render him deportable. Post-conviction counsel acknowledged that the Petitioner became aware of his deportable status in 2017. However, post-conviction counsel explained that upon the Petitioner’s learning he was deportable, the Petitioner consulted an immigration attorney, who incorrectly advised him there was no avenue for relief. The Petitioner did not discover relief was available via a post-conviction petition until he consulted post-conviction counsel in 2022. Post-conviction

counsel requested an evidentiary hearing so that the Petitioner could present proof that the statute of limitations should be tolled on due process grounds.

The State responded that in order to show due process tolling, the Petitioner was required to show he pursued his rights diligently and that some “extraordinary circumstance” prevented him from filing his petition in a timely manner. The State argued that the Petitioner had shown neither, noting that he became aware of his deportation status in 2017. The State then advised the post-conviction court, “Back in 2021, [the Petitioner] appeared before Your Honor on a violation of probation whereby he was revoked and reinstated. At that time none of this was alleged.”¹ The post-conviction court agreed with the State and denied the motion to reconsider, stating that the Petitioner “certainly he talked with criminal counsel in 2017 and still did not pursue his remedies.”

ANALYSIS

On appeal, the Petitioner claims that the post-conviction court erred by denying his request to toll the statute of limitations. He asks that we find due process tolling is appropriate in this case and remand for an evidentiary hearing on the merits of his petition. The State argues that the post-conviction court properly dismissed the petition because the Petitioner has not alleged any basis for due process tolling. We agree with the State.

Post-conviction relief is warranted when a petitioner establishes that his or her conviction is void or voidable because of an abridgment of a constitutional right. Tenn. Code Ann. § 40-30-103. The burden in a post-conviction proceeding is on the petitioner to prove the factual allegations in support of his or her grounds for relief by clear and convincing evidence. Tenn. Code Ann. § 40-30-110(f); *Dellinger v. State*, 279 S.W.3d 282, 293-94 (Tenn. 2009). On appeal, we are bound by the post-conviction court’s findings of fact unless we conclude that the evidence in the record preponderates against those findings. *Fields v. State*, 40 S.W.3d 450, 456 (Tenn. 2001). A post-conviction court’s conclusions of law, however, are subject to de novo review with no presumption of correctness. *Id.* at 457.

Under the Post-Conviction Procedure Act, a claim for post-conviction relief must be filed “within one (1) year of the date of the final action of the highest state appellate court to which an appeal is taken or, if no appeal is taken, within one (1) year of the date on which the judgment became final, or consideration of the petition shall be barred.”

¹ At oral arguments, post-conviction counsel explained that the Petitioner was served with a probation violation warrant and arrested when he returned to the United States from Tunisia in 2021. Upon being released from confinement, the Petitioner contacted post-conviction counsel.

Tenn. Code Ann. § 40-30-102(a). The post-conviction statute contains a specific anti-tolling provision:

The statute of limitations shall not be tolled for any reason, including any tolling or saving provision otherwise available at law or equity. Time is of the essence of the right to file a petition for post-conviction relief or motion to reopen established by this chapter, and the one-year limitations period is an element of the right to file the action and is a condition upon its exercise. Except as specifically provided in subsections (b) and (c), the right to file a petition for post-conviction relief or a motion to reopen under this chapter shall be extinguished upon the expiration of the limitations period.

Id.

Subsection (b) of the statute sets forth the three narrow exceptions under which an untimely petition may be considered, none of which are applicable here. In addition to the three narrow exceptions listed in the statute, principles of due process may allow for the tolling of the statute of limitations in limited circumstances. *See Seals v. State*, 23 S.W.3d 272, 279 (Tenn. 2000) (“[W]e conclude that while the one-year statute of limitations set forth in Tenn. Code Ann. § 40-30-202(a) does not violate due process on its face, application of the statute must not deny a petitioner a reasonable opportunity to raise a claim in a meaningful time and manner.”); *see also Williams v. State*, 44 S.W.3d 464, 468 (Tenn. 2001); *Burford v. State*, 845 S.W.2d 204, 208 (Tenn. 1992).

A post-conviction petitioner is entitled to due process tolling of the 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 v. State*, 402 S.W.3d 615, 631 (Tenn. 2013)). Pursuing one’s rights diligently “does not require a prisoner to undertake repeated exercises in futility or to exhaust every imaginable option, but rather to make reasonable efforts [to pursue his or her claim].” *Id.* (quoting *Whitehead*, 402 S.W.3d at 631). Due process tolling “must be reserved for those rare instances where -- due to circumstances external to the party’s own conduct -- it would be unconscionable to enforce the limitation period against the party and gross injustice would result.” *Id.* (quoting *Whitehead*, 402 S.W.3d at 631-32). “The question of whether the post-conviction statute of limitations should be tolled is a mixed question of law and fact that is . . . subject to de novo review.” *Id.* at 16 (citing *Smith v. State*, 357 S.W.3d 322, 355 (Tenn. 2011)); *Whitehead*, 402 S.W.3d at 621.

Under our de novo review, we conclude that the post-conviction court properly dismissed the petition. As this court has explained,

The claims made in the petition, if true, existed and were available to be pursued since the petitioner's conviction. The fact that he had an attorney who reviewed his case to determine the potential for post-conviction relief and advised against filing a petition did not negate the reasonable opportunity available to the petitioner to seek relief, if he so chose. In this respect, even if the advice was given with less than professional competence, [due process] does not mandate the tolling of the statute of limitations.

State v. Phillips, 904 S.W.2d 123, 124 (Tenn. Crim. App. 1995). In a similar vein, “[i]gnorance of the law does not rise to the level of violating due process for tolling purposes.” *Vaughn Harris v. State*, No. M2019-01873-CCA-R3-PC, 2020 WL 4557031, at *1 (Tenn. Crim. App. Aug. 7, 2020).

The Petitioner does not dispute that he found out about his deportable status in 2017. Five years later, and seven years after his guilty plea, he had the wherewithal to consult additional counsel, who finally advised him to pursue post-conviction relief. Therefore, the Petitioner has not shown that he was pursuing his rights diligently or that some “extraordinary circumstance” beyond his control prevented him from timely filing his petition. We affirm the post-conviction court’s summary dismissal of the petition as untimely.

CONCLUSION

Based upon the oral arguments, the record, and the parties’ briefs, we conclude the Petitioner has not demonstrated that the statute of limitations should be tolled on due process grounds. Accordingly, we affirm the judgment of the post-conviction court.

JOHN W. CAMPBELL, SR., JUDGE