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Clerk of the
Appellate Courts

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs March 25, 2026

JOSHUA F. LINEBARGER v. STATE OF TENNESSEE

Appeal from the Criminal Court for Knox County

Nos. 129070, 129073, 129075, 129076 G. Scott Green, Judge

No. E2025-00662-CCA-R3-PC

The Petitioner, Joshua Linebarger, appeals the summary dismissal of his petition for post-conviction relief as untimely. After pleading guilty in the Knox County Criminal Court to theft, reckless burning, and assault and receiving an effective ten-year sentence, the Petitioner filed a post-conviction petition outside the one-year statute of limitations. The post-conviction court dismissed the petition, concluding that it was untimely on its face and that principles of due process did not toll the limitations period. Upon our review, we 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 TIMOTHY L. EASTER and J. ROSS DYER, JJ., joined.

Joshua F. Linebarger, Whiteville, Tennessee, Pro Se.

Jonathan Skrmetti, Attorney General and Reporter; Garrett D. Ward, Senior Assistant Attorney General; Charmé P. Allen, District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTUAL BACKGROUND

The Petitioner pled guilty in the Knox County Criminal Court to four offenses: two counts of theft, one count of reckless burning, and one count of assault. Pursuant to the plea agreement, the trial court imposed an effective ten-year sentence, which was suspended to probation. The judgments were filed on July 24, 2023, and the Petitioner did not pursue a direct appeal.

On October 30, 2024, after the trial court revoked the Petitioner's suspended sentences, the Petitioner filed a pro se petition for post-conviction relief challenging each of his four convictions. In the petition, the Petitioner asserted multiple grounds for relief, including claims that his guilty pleas were not knowing and voluntary, that his convictions were based on evidence obtained through an unlawful arrest, and that the prosecution failed to comply with its obligations under *Brady v. Maryland*. He also raised claims concerning the composition of the grand jury and alleged that he received ineffective assistance of counsel.

In attachments to the petition, the Petitioner acknowledged that the filing may have occurred beyond the one-year statute of limitations applicable to post-conviction proceedings. He asserted that he had been told to "wait" and that a "true remedy for rehabilitation would be provided." He also said that he suffers from "mental illnesses, behavioral problems, and a life-threatening drug addiction."

On April 8, 2025, the post-conviction court entered a written order summarily dismissing the petition. The court found that the petition was filed beyond the one-year statute of limitations and that the Petitioner failed to plead facts establishing a basis for tolling the limitations period. The Petitioner filed a timely notice of appeal twenty-nine days later. *See* Tenn. R. App. P. 4(a).

STANDARDS OF APPELLATE REVIEW

Our supreme court has recognized that a reviewing court must first identify the appropriate standard of review. *State v. Enix*, 653 S.W.3d 692, 698 (Tenn. 2022). The issues presented in this appeal are 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 that limitations period. The question of whether a petition is timely under the post-conviction statute of limitations presents a question of law that we review de novo. *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*. Whether due process tolling applies is a mixed question of law and fact that we also review under a de novo standard of review. *Whitehead v. State*, 402 S.W.3d 615, 621 (Tenn. 2013).

ANALYSIS

The Tennessee Post-Conviction Procedure Act (“the Act”) provides a limited 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 (2025). A post-conviction petitioner bears the burden of proving the factual allegations supporting such relief by clear and convincing evidence. *Id.* § 40-30-110(f) (2025). 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)). Before a court may consider whether a petitioner has met that burden, however, the petition must be timely filed or otherwise properly before the court under the Act.

In this appeal, the Petitioner acknowledges that his post-conviction petition was filed outside the one-year statute of limitations but contends that due process principles nevertheless require tolling of the limitations period. In support of that claim, he asserts that he was “told [to] wait and in fact told a remedy for true rehabilitation would be provided.” He also alleges that he suffered from “mental illnesses, behavioral problems, and a life-threatening drug addiction.”

The State responds that the petition is untimely on its face and that the Petitioner has failed to allege any recognized basis for due process tolling under Tennessee law, including a later-arising claim, mental incompetence, or attorney misconduct. We agree with the State and conclude that the Petitioner has not established grounds for tolling the statute of limitations.

A. POST-CONVICTION STATUTE OF LIMITATIONS

We begin with the threshold question of timeliness. Under the Act, when a defendant does not pursue a direct appeal, a petition for post-conviction relief must be filed “within one (1) year of the date on which the judgment became final[.]” Tenn. Code Ann. § 40-30-102(a) (2025). The Tennessee Supreme Court has explained 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). Because compliance with the statute of limitations is a statutory condition on the availability of post-conviction relief, courts must resolve the issue of timeliness before addressing the merits of any post-conviction claim. *See Taylor v. State*, No. E2024-00343-CCA-R3-PC, 2024 WL 4836520, at *2 (Tenn. Crim. App. Nov. 20, 2024), *no perm. app. filed*.

When no appeal is taken, a judgment becomes final thirty days after the court clerk files it. *State v. Stephens*, 264 S.W.3d 719, 729 (Tenn. Crim. App. 2007). Applying that rule here, the judgments were filed on July 24, 2023, and became final on August 23, 2023. The Petitioner, therefore, had until August 23, 2024, to file a timely petition for post-conviction relief. *See Purcell v. State*, No. E2021-00996-CCA-R3-PC, 2022 WL 2718658, at *4 (Tenn. Crim. App. July 13, 2022), *perm. app. denied* (Tenn. Dec. 19, 2022). His petition, however, was not filed until October 30, 2024—nearly two months after the limitations period expired.

There are limited circumstances in which a petition may be deemed timely filed even though it is received by the clerk after the one-year limitations period has run. Relevant here, an incarcerated petitioner may timely file a post-conviction petition under the so-called “mailbox rule” by delivering it “to the appropriate individual at the correctional facility within the time fixed for filing.” Tenn. R. Sup. Ct. 28, § 2(G).

Examining the record before us, we determine that the Petitioner did not deliver his petition to correctional authorities within the limitations period. The preprinted post-conviction form asked, “What date is this petition being given to prison authorities for mailing?” The Petitioner responded, “8 20 2024 is the goal” and added, “we are still having hearings[.]” This response reflects, at most, an aspirational filing date rather than an assertion that the petition was actually delivered to correctional authorities on or before the August 23, 2024, deadline. More importantly, the attachments to the petition reference the

October 24, 2024, revocation of the Petitioner’s suspended sentences, demonstrating that the materials were not filed until after that revocation occurred.

Accordingly, the allegations in the petition and the accompanying record do not establish that the Petitioner delivered the petition to the appropriate individual at his correctional facility on or before August 23, 2024, as required by Tennessee Supreme Court Rule 28, section 2(G). We, therefore, agree with the post-conviction court that the petition is untimely on its face.

B. DUE PROCESS TOLLING OF THE STATUTE OF LIMITATIONS

Having determined that the petition is untimely on its face, we turn to the Petitioner’s argument that due process principles nevertheless require tolling of the limitations period. Our supreme court has emphasized that “[a] petitioner has no fundamental right to collaterally attack a conviction, and due process requires only that a petitioner be provided an opportunity for the presentation of the claim at a meaningful time and in a meaningful manner.” *Nix*, 40 S.W.3d at 463. To obtain due process tolling, a petitioner must establish both “(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). The burden rests with the petitioner to allege and prove facts showing that tolling is warranted. *See Anderson v. State*, 692 S.W.3d 94, 104 (Tenn. Crim. App. 2023).

The supreme court has also stressed that “[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). Courts have recognized three general categories of such circumstances: (1) claims that arise after the statute of limitations has expired; (2) mental incompetence that prevents a timely filing; and (3) attorney misconduct or abandonment that forecloses a petitioner’s opportunity to act. *Whitehead*, 402 S.W.3d at 623-24.

By contrast—and consistent with these categories—due process tolling is not available when the delay results from the petitioner’s own inaction. For example, tolling does not apply to petitioners who are aware of a claim but choose to wait before pursuing it. *Wooten v. State*, No. W2019-01228-CCA-R3-PC, 2020 WL 1491376, at *3 (Tenn. Crim.

App. Mar. 26, 2020), *perm. app. denied* (Tenn. Aug. 11, 2020). It does not apply when a petitioner miscalculates the deadline. *Barnett v. State*, No. M2021-00554-CCA-R3-PC, 2022 WL 2277146, at *4 (Tenn. Crim. App. June 23, 2022), *perm. app. denied* (Tenn. Nov. 16, 2022). And it does not apply when a petitioner is unaware of the statute of limitations, even if that ignorance stems from counsel’s negligence. *McVay v. State*, No. W2021-00324-CCA-R3-PC, 2022 WL 421112, at *4 (Tenn. Crim. App. Feb. 11, 2022), *perm. app. denied* (Tenn. June 9, 2022).

Applying these principles here, none of the three recognized categories applies. First, the Petitioner does not allege that his claims arose only after the limitations period expired. On the contrary, all of the claims he alleges existed at the time he entered his plea. *See Vasquez v. State*, No. W2018-00692-CCA-R3-PC, 2019 WL 994179, at *2 (Tenn. Crim. App. Feb. 28, 2019) (“As a general rule, the claim at issue must not have existed during the limitations period to trigger due process consideration.”), *perm. app. denied* (Tenn. June 21, 2019). As such, the Petitioner has not established that any later-arising claim warrants due process tolling of the statute of limitations.

Second, the Petitioner does not assert that mental incompetence prevented him from pursuing relief in a timely manner. Our supreme court has made clear that

a post-conviction petition must include specific factual allegations that demonstrate the petitioner’s inability to manage his personal affairs or understand his legal rights and liabilities. Unsupported, conclusory, or general allegations of mental illness will not be sufficient to require tolling and prevent summary dismissal[.]

Nix, 40 S.W.3d at 464. In this case, the Petitioner alleges that he generally suffered from “mental illnesses, behavioral problems, and a life-threatening drug addiction.” However, he makes no further allegation that these conditions affected his ability to manage his personal affairs or understand his legal rights. As such, the Petitioner’s generalized allegations fail to establish that he is entitled to due process tolling on the basis of mental incompetence.

Finally, the Petitioner does not argue that attorney misconduct or abandonment prevented him from filing a timely post-conviction petition. Our supreme court has established that such misconduct arises when the petitioner’s “attorney of record abandons the prisoner or acts in a way directly adverse to the prisoner’s interests, such as by actively

lying or otherwise misleading the prisoner to believe things about his or her case that are not true.” *Whitehead*, 402 S.W.3d at 631. Accordingly, to obtain tolling on this basis, the Petitioner must allege facts showing that counsel’s conduct affirmatively misled him or otherwise prevented him from timely filing his petition.

The record here does not satisfy that requirement. The Petitioner alleged that he was “told [to] wait and in fact told a remedy for true rehabilitation would be provided.” However, he did not identify who gave him this advice. Instead, he vaguely asserts in his appellate brief that his post-conviction petition was filed after the statute of limitations expired “because of untrue promises made from counsel.”

Even if these unsworn allegations were true and supported, they do not justify due process tolling of the limitations period. Taken at face value, counsel’s statements did not mislead the Petitioner about the running of the post-conviction statute of limitations. Rather, they constituted advice on the likelihood of success of alternative remedies in the related probation revocation context, along with a recommendation to “wait” and pursue those remedies rather than seek timely post-conviction relief. Indeed, the Petitioner’s own petition reveals that his “goal” was to file a timely post-conviction petition, but the revocation proceedings were not yet complete.¹

Thus, the decision whether to pursue timely post-conviction relief or await the outcome of the revocation proceedings—or pursue both simultaneously—was a strategic choice wholly within the Petitioner’s control, not an extraordinary circumstance that prevented timely action. Stated plainly, the Petitioner was not denied a reasonable opportunity to seek post-conviction relief; he simply elected to pursue other remedies first. *See Brock v. State*, No. E2024-00510-CCA-R3-PC, 2024 WL 5103446, at *4 (Tenn. Crim. App. Dec. 13, 2024) (“[A] petitioner is not entitled to due process tolling when the petitioner knows of a claim and yet waits to raise the issue.”), *perm. app. denied* (Tenn. Apr. 17, 2025); *see also Sample v. State*, 82 S.W.3d 267, 284 (Tenn. 2002) (Barker, J., concurring) (recognizing that a petitioner’s dilatory conduct “does not properly entitle him

¹ Of course, the presence of revocation proceedings did not prohibit the Petitioner from also simultaneously seeking post-conviction relief. *See Alexander v. State*, No. W2022-01552-CCA-R3-PC, 2023 WL 5202416, at *3 (Tenn. Crim. App. Aug. 14, 2023) (denying due process tolling and recognizing, in part, that “Petitioner could have filed a post-conviction petition challenging his counsel’s representation at sentencing prior to his violation of probation proceedings or, for that matter, while it was pending.”), *no perm. app. filed*.

to due-process tolling considerations”). As such, the Petitioner has not established an entitlement to due process tolling based on attorney misconduct or abandonment.

Our supreme court has cautioned that the threshold for due process tolling “is very high, lest the exceptions swallow the rule.” *Bush*, 428 S.W.3d at 22 (citation modified). 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.” *Whitehead*, 402 S.W.3d at 631-32 (citation omitted). The circumstances here do not present one of the rare cases in which due process tolling is appropriate. Accordingly, we affirm the post-conviction court’s conclusion that 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 running of the limitations period. We respectfully affirm the judgment of the post-conviction court summarily dismissing the petition.

s/ Tom Greenholtz

TOM GREENHOLTZ, JUDGE