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Clerk of the
Appellate Courts

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs November 9, 2022

DARCELL DOMINIQUE WRIGHT v. STATE OF TENNESSEE

**Appeal from the Circuit Court for Montgomery County
No. 63CC1-2016-CR-177 Robert T. Bateman, Judge**

No. M2022-00416-CCA-R3-PC

The Petitioner, Darcell Dominique Wright, appeals from the Montgomery County Circuit Court's dismissal of his petition for post-conviction relief. On appeal, the Petitioner contends that the post-conviction court erred when it held that the Petitioner's claim of limited ability to access the penitentiary law library due to lockdowns did not entitle him to due process tolling of the one-year statute of limitations for filing his petition. We affirm the judgment of the post-conviction court.

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

ROBERT H. MONTGOMERY, JR., J., delivered the opinion of the court, in which CAMILLE R. McMULLEN and TOM GREENHOLTZ, JJ., joined.

Roger Nell, District Public Defender; Charles S. Bloodworth, Assistant District Public Defender, Clarksville, Tennessee, for the appellant, Darcell Dominique Wright.

Jonathan Skrmetti, Attorney General and Reporter; Benjamin A. Ball, Senior Assistant Attorney General; Robert J. Nash, District Attorney General, for the appellee, State of Tennessee.

OPINION

A jury convicted the Petitioner of voluntary manslaughter and aggravated assault on January 25, 2018. He received an effective sentence of twenty years. He appealed, and this court affirmed the convictions. *State v. Darcell Wright*, No. M2018-00574-CCA-R3-CD, 2020 WL 464631, at *1 (Tenn. Crim. App. Jan. 29, 2020), *no perm. app. filed*.

The Petitioner filed a pro se petition for post-conviction relief on June 7, 2021, more than one year after his convictions became final. The State filed a motion for summary

dismissal because the petition for post-conviction relief had been filed more than six months after the statutory deadline for filing and because the Petitioner had not stated a basis for tolling the one-year statute of limitations. A hearing on the motion was conducted on November 3, 2021, and a continuance was granted for the Petitioner to have additional time to obtain evidence to support his due process tolling claim. A second hearing occurred on February 2, 2022.

The Petitioner testified at the second hearing that he became aware of the need to file a petition for post-conviction relief in January 2020. He stated that he went to the penitentiary law library in March and October 2020. He said he met with inmate “legal aide[s]” at the library. The Petitioner stated that he met with a different aide each time. He testified that none of the aides explained to him that he had a one-year deadline to file his post-conviction petition. He stated that there was no opportunity for him to go to the library from October 2020 until the January 2021 filing deadline for his petition had passed.

The Petitioner testified that COVID lockdowns prohibited prisoners from accessing the law library. A copy of a library calendar and attendance log maintained by the staff was received as an exhibit. The record reflects that intermediate institutional lockdowns occurred when the Petitioner said that he sought to go to the library. However, the record reflects that regular prisoner attendance at the library was permitted when institutional lockdowns were not in effect. The record also reflects that February 2020 was the only month where an institution-wide lockdown occurred for a significant portion of the month. The Petitioner testified that “prisoner pods” were locked down due to staff shortages and prisoner behavior. He stated that he was subject to an individual lockdown in addition to the institutional lockdowns, both of which prevented him from accessing the law library.

On cross-examination, the Petitioner testified that in January 2020, he was informed that the appeal of his convictions was denied. He stated that he started the paperwork for his post-conviction petition in January 2020 and that no one mentioned to him a filing deadline during his March 2020 visit to the law library. The Petitioner stated that he did not think he had unlimited time to submit his petition but that he did not know about the one-year time limit. He testified that he submitted an “inmate request form” in an attempt to visit the library after his March 2020 visit and that he continued to work on his post-conviction petition during his October visit to the library.

The Petitioner testified that non-COVID institutional-level lockdowns after October 2020 prevented him from accessing the law library. The Petitioner testified that he was also placed in an individual lockdown due to a “pending investigation” that prevented him from going to the library. He stated that he was unaware of why he had a pending investigation and that the investigation ended without a reason being given. The Petitioner did not testify to or provide evidence of the length of the “pending investigation” lockdown.

After the hearing, the post-conviction court received on February 22, 2022, as an exhibit, an unsworn document titled “Declaration by Prisoner Raymond Watson.” Mr. Watson stated that between January 29, and February 10, 2020, the penitentiary was on an entire lockdown and that prisoner access to the law library was infrequent due to staff shortages and different waves of COVID. He stated that requests for legal aid were considered “dead letters” and not given a response. He wrote that the penitentiary staff did not assist prisoners in drafting legal documents due to potential civil liability concerns. Mr. Watson’s declaration indicated that his statement applied to the general period in which the Petitioner had to file a timely petition but did not specify a timeframe when these obstacles occurred.

The post-conviction court dismissed the petition in a written order filed on February 25, 2022, and held the petition was filed untimely and the Petitioner failed to establish he was entitled to a tolling of the limitation period. The court found that the Petitioner’s circumstances did not satisfy any of the statutory exemptions to the filing deadline and that the Petitioner had not satisfied any of the circumstances for due process tolling articulated by our supreme court. *See Whitehead v. State*, 402 S.W.3d 615, 623-24 (Tenn. 2013). The post-conviction court concluded that even though the facility in which the Petitioner was incarcerated was on lockdown for a portion of the one-year limitation period, the lockdowns did not prevent the Petitioner from filing his petition. The Petitioner timely appealed the dismissal.

I

Due Process Tolling

The Petitioner contends that the post-conviction court erred in denying his due process tolling claim. He argues that he is entitled to tolling of the statute of limitations because he pursued his rights diligently and that he faced extraordinary circumstances that prevented timely filing. The State counters that the post-conviction court did not err in determining that the Petitioner was not entitled to due process tolling. We agree with the State.

Post-conviction relief is available “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.” T.C.A. § 40-30-103 (2018). A petition 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 consideration of the petition shall be barred.” T.C.A. § 40-30-102(a) (2018). The Post-Conviction Procedure Act states, “Time is of the essence of the right to file a petition for post-conviction relief . . . , and the one-year limitations period is an element of the right to file [such an] action and is a condition upon its exercise.” *Id.* The Act provides:

(b) No court shall have jurisdiction to consider a petition filed after the expiration of the limitations period unless:

- (1) The claim in the petition is based upon a final ruling of an appellate court establishing a constitutional right that was not recognized as existing at the time of trial, if retrospective application of that right is required. The petition must be filed within one (1) year of the ruling of the highest state appellate court or the United States supreme court establishing a constitutional right that was not recognized as existing at the time of trial;
- (2) The claim in the petition is based upon new scientific evidence establishing that the petitioner is actually innocent of the offense or offenses for which the petitioner was convicted; or
- (3) The claim asserted in the petition seeks relief from a sentence that was enhanced because of a previous conviction and the conviction in the case in which the claim is asserted was not a guilty plea with an agreed sentence, and the previous conviction has subsequently been held to be invalid, in which case the petition must be filed within one (1) year of the finality of the ruling holding the previous conviction to be invalid.

Id. at (b)(1)-(3). In addition to the statutory exceptions, due process may require tolling of the statute of limitations in certain circumstances. *Burford v. State*, 845 S.W.2d 204, 208 (Tenn. 1992) (“[D]ue process requires that potential litigants be provided an opportunity for the presentation of claims at a meaningful time and in a meaningful manner.”) (citing *Long v. Zimmerman Brush Co.*, 455 U.S. 422, 437 (1982)). See *Whitehead*, 402 S.W.3d at 623-24.

When a court receives a post-conviction petition, it must conduct a preliminary review to determine whether the petition is timely and whether it states a colorable claim. T.C.A. § 40-30-106(b), (d) (2018). “If it plainly appears from the face of the petition, any annexed exhibits or the prior proceedings in the case that the petition was not filed . . . within the time set forth in the statute of limitations . . . the judge shall enter an order dismissing the petition.” *Id.* at (b).

We begin by addressing the Petitioner’s argument that he is entitled to due process tolling, as the Petitioner does not claim any statutory tolling exception. The standard of review for due process tolling is a mixed question of fact and law, and, therefore, subject to de novo review. See *Whitehead*, 402 S.W.3d at 621. Even so, we are bound by the post-conviction court’s factual findings unless the evidence preponderates to the contrary. *Id.*; *Smith v. State*, 357 S.W.3d 322, 336 (Tenn. 2011); *Dellinger v. State*, 279 S.W.3d 282, 294 (Tenn. 2001). The Petitioner contends that he is entitled to due process tolling because he has shown that he had been “pursuing his . . . rights diligently” and “that some

extraordinary circumstance stood in his . . . way and prevented timely filing.” *See Id.* at 631. In support of his argument, the Petitioner cites to his testimony that COVID lockdown measures and other lockdowns prevented the Petitioner’s accessing the library. Additionally, the Petitioner submits that the calendar from the library and the log of prisoners who came to the library during the period in question support his claim.

Although the Petitioner testified that lockdowns prevented him from accessing the penitentiary law library, the calendar the Petitioner introduced reflects only a single one-month period during which the penitentiary was on lockdown due to COVID. The calendar reflects that other lockdowns occurred during the one-year period in which to file a timely petition, but no evidence shows that successive lockdowns prevented the Petitioner from going to the library and submitting his petition in a timely manner. The Petitioner testified, and the attendance log confirms that he went to the library twice to meet with legal aides. The attendance log also conveys that other prisoners accessed the law library during the one-year period when the Petitioner could have filed a timely petition.

The record reflects that the Petitioner could have worked on his petition throughout the one year in which he had to file a timely petition. The Petitioner has failed to demonstrate why the two visits to the law library were insufficient for him to be able to file the petition in a timely manner, and why he could not go to the library during the days when other prisoners had gone. The Petitioner fails to establish that “some extraordinary circumstance stood in his . . . way and prevented timely filing” and that he was “pursuing his . . . rights diligently” by going to the library twice when the record reflects that the library was available at other times during the one-year period. *See Whitehead*, 402 S.W.3d at 631. The record supports the post-conviction court’s dismissal of the petition. The Petitioner has failed to demonstrate that he is entitled to due process tolling of the one-year statute of limitation. *See T.C.A. § 40-30-102(b)(1)-(3); see also Whitehead*, 402 S.W.3d at 623-24.

In consideration of the foregoing and the record as a whole, the judgment of the post-conviction court is affirmed.

ROBERT H. MONTGOMERY, JR., JUDGE