

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs November 4, 2025

FILED

11/07/2025

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. TONY S. WALKER

Appeal from the Circuit Court for Gibson County
No. 15248 Roy B. Morgan, Jr., Senior Judge

No. W2024-01721-CCA-R3-CD

The pro se Petitioner, Tony S. Walker, appeals the summary denial of his petition seeking various forms of relief from his first degree felony murder conviction and sentence of life imprisonment. We affirm the judgment of the trial court.

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 STEVEN W. SWORD, JJ., joined.

Tony Scott Walker, Henning, Tennessee, Pro Se.

Jonathan Skrmetti, Attorney General and Reporter; and G. Kirby May, Assistant Attorney General, for the appellee, State of Tennessee.

OPINION

FACTS

In 1997, the Petitioner was convicted by a Gibson County jury of first degree felony murder for his December 8, 1995 shooting of a seventy-seven-year-old Milan grocery store owner during a robbery. The Petitioner's conviction was affirmed by this court on direct appeal, and his application for permission to appeal to our supreme court was denied. *State v. Walker*, No. 02C01-9704-CC-00147, 1997 WL 746433, at *1 (Tenn. Crim. App. Dec. 3, 1997), *perm. app. denied* (Tenn. Sept. 21, 1998). We provided the following summary of the case in our opinion affirming the summary dismissal of the Petitioner's 2004 petition for writ of error coram nobis:

Our direct appeal opinion reveals that the [P]etitioner, who was hospitalized for gunshot wounds on the day of the crime, gave an initial statement to police in which he claimed he was shot after walking into the middle of a robbery at the victim's store. After being transferred to another hospital, the [P]etitioner changed his story, admitting that he had shot the victim following a dispute over the amount of change he was owed. According to the [P]etitioner, he left the store, armed himself with a hammer, returned, and confronted the victim. He said that the victim retrieved his .38 pistol and fired two shots, striking him in the hip and the thigh, and that he responded by striking the victim in the back of the head with the hammer, wrestling the gun from him, firing one shot into the back of the victim's head, picking up a wallet from the floor, and fleeing the scene.

Walker v. State, No. W2009-00988-CCA-R3-CD, 2010 WL 1947259, at *1 (Tenn. Crim. App. May 14, 2010), *perm. app. denied* (Tenn. Oct. 13, 2010) (citations omitted).

In his petition for post-conviction relief, the Petitioner argued that he received ineffective assistance of counsel and that the post-conviction court erred in finding that his statement to law enforcement was voluntary. In affirming the post-conviction court's denial of the petition, this court provided the following account of the evidence against the Petitioner at trial:

The real difficulty in defending this case was not the statement, but the damning facts, that the [P]etitioner initially said that he had walked into the store as the victim was being robbed, but later claimed self-defense; that while the [P]etitioner was shot in the right front thigh and right hip, both wounds at a distance greater than contact but less than twenty-four inches, the victim was shot in the back of the head from a distance greater than contact but less than six inches; that the victim's wallet containing \$330 in cash was found in a ditch behind the [P]etitioner's house; and the Petitioner had in his pocket at the time of his arrest \$201, which was approximately \$70 more than the paycheck he had just received. Thus, based on the undisputed facts of this case, a reasonable jury could have found that the victim fired his pistol as he was thwarting the [P]etitioner's attack with a hammer and that the [P]etitioner obtained the victim's pistol and executed him, then taking the victim's wallet.

Walker v. State, No. W2001-02921-CCA-R3-PC, 2003 WL 721706, at *8 (Tenn. Crim. App. Feb. 28, 2003), *perm. app. denied* (Tenn. May 27, 2003).

In May 2011, the Petitioner filed a pro se petition for writ of habeas corpus, which was summarily dismissed by the habeas corpus court. This court affirmed the summary dismissal of the petition in a memorandum opinion pursuant to Rule 20 of the Rules of the Court of Criminal Appeals, noting that the Petitioner not only failed to comply with the strict procedural requirements for filing a petition for writ of habeas corpus, but also failed to state a cognizable claim for habeas corpus relief. *Walker v. State*, No. W2011-01668-CCA-R3-HC, 2012 WL 550341 at *2-3 (Tenn. Crim. App. Feb. 17, 2012), *perm. app. denied* (Tenn. June 19, 2012).

On May 22, 2023, the Petitioner filed the pro se petition in this case, which he styled as a “Petition to Set Innocent Walker Free” via a petition for writ of habeas corpus, and/or a Tenn. R. Crim. P. 36.1 motion to correct an illegal sentence, and/or a petition for “Extraordinary Relief on Miscarriage of Justice/Actual Innocence, Double Jeopardy, Denial of Right to a Trial by Jury, and Ineffective Assistance of Counsel[.]” The Petitioner asserted that, given the various avenues of relief sought in his petition, Gibson County was the most convenient filing court for several reasons, including the ready availability of the record for full and meaningful review by the trial court and the ability of the court to provide speedy and effective relief.

The Petitioner’s lengthy petition involves intertwined issues that predominantly depend on the Petitioner’s version of the facts, which he alleges proves that he was “factually and actually innocent” of the crime. In the statement of facts portion of the petition, the Petitioner asserts that the intoxicated victim shot the Petitioner twice in the back as the Petitioner turned to leave the store and once in the front as the Petitioner turned toward the victim. The victim then accidentally shot himself in the head as the Petitioner, acting in self-defense, wrestled with the victim for control of the gun. In support, the Petitioner cites a variety of documents attached to the petition, including newspaper articles quoting a police investigator’s quoting of a medical professional that the Petitioner was shot twice in the back and once in the front; the victim’s toxicology report showing the victim had a blood alcohol content level of .07; police investigative notes summarizing Diane Sturdivant’s statement about comments the victim made about possibly needing to use his gun and the victim’s nervous demeanor on the day of the crime; newspaper articles about a police lieutenant involved in the Petitioner’s case having been granted pretrial diversion after being indicted for evidence tampering and official misconduct in an unrelated case; and the March 23, 2023 affidavit of David Brooks stating that the victim was known to have been robbed at gunpoint before the crime, to have purchased a pistol after the robberies, and to have been “frequently drinking while he tended his store.”

With respect to his claims regarding his entitlement to extraordinary relief, the Petitioner argues, among other things, that his dual charges of felony murder and premeditated murder violated the Fifth Amendment prohibition against double jeopardy,

rendering the entire proceedings void; the trial court's jury instruction on the murder charges violated the Fifth Amendment prohibition against double jeopardy, the Petitioner's Sixth Amendment right to a trial by jury, and the Petitioner's due process rights under the Fifth and Fourteenth Amendments; the Petitioner's conviction for felony murder is illegal because the State failed to prove the underlying felony of robbery; the Petitioner's counsel provided ineffective assistance, rendering the entire proceedings illegal and void; and the Petitioner's life sentence with a release eligibility date of fifty-one years is illegal, inhumane, and cruel.

On October 29, 2024, the trial court entered an order denying the petition without an evidentiary hearing or the appointment of counsel. The trial court found that the Petitioner failed to state colorable claims for habeas corpus or Rule 36.1 relief; that the Petitioner did not provide any compelling reason to reopen his post-conviction petition; that the Petitioner waived his claims of miscarriage of justice, double jeopardy, and denial of right to a jury trial by failing to raise those issues during his direct appeal; that the record was clear that the Petitioner was afforded his constitutional right to a trial by jury, which resulted in a conviction, and that the Petitioner exercised his right to appeal and to file post-conviction and other petitions; and that the Petitioner failed to state a colorable claim as to any double jeopardy issue. This appeal followed.

ANALYSIS

In his appellate brief, the Petitioner argues that the trial court erred: "in denying [his] 300-page [p]etition in eighteen (18) days without addressing the issues and without proper citations"; by applying the wrong standards of review; and by its rulings on the issues of waiver, colorable claims, and factual innocence. The State argues that the trial court's summary denial of the petition was proper. We agree with the State.

The Petitioner first contends that the trial court ruled too quickly on his lengthy petition, failed to address the issues, applied the wrong standards of review to the issues, and failed to provide proper citations. By comparing his lengthy petition to the trial court's five-page order and citing the relatively short time it took for the trial court to enter the order following assignment of the case, the Petitioner suggests that the trial court failed to properly read or consider his petition and its issues.¹ We disagree. The trial court's order was succinct but thorough, addressing the Petitioner's issues and citing relevant statutory provisions and case law.

¹ The original trial judge recused himself due to a conflict. On October 11, 2024, our supreme court entered an order designating a senior judge to hear the case.

We further disagree that the trial court erred in ruling that the Petitioner failed to establish a colorable claim for habeas corpus or Rule 36.1 relief, waived the issues that could have raised on direct appeal, and failed to meet any of the narrow exceptions that warrant reopening a post-conviction petition following the expiration of the one-year statute of limitations. As with his petition, the Petitioner's arguments on appeal rely on his version of the facts. The Petitioner asserts in his brief that "[i]f the factual evidence is wrong" and he was not, in fact, innocent of the murder charge, the trial court and the State "would have stated such." The Petitioner contends that the trial court's silence in its order on the issue of the Petitioner's actual innocence "speaks itself with volume in the criminal cases as a waiver or plain error."

The Petitioner ignores that the trial court noted that the Petitioner was afforded a trial by jury, which resulted in his conviction for first degree felony murder, and that the Petitioner availed himself of a direct appeal, a post-conviction petition, a petition for writ of habeas corpus, and a petition for writ of error coram nobis. In the instant petition, the Petitioner attempts to relitigate the sufficiency of the evidence and to raise issues that could and should have been raised on direct appeal. He also attempts to relitigate other issues that were previously raised and addressed in his petitions for post-conviction relief, for writ of error coram nobis, and for writ of habeas corpus.

In his reply brief, the Petitioner complains that the State addressed in its brief only whether the Petitioner was entitled to a writ of habeas corpus without considering the other avenues of relief sought in the petition. The Petitioner agrees with the State that a *Brady* violation is not a cognizable claim in a habeas corpus proceeding, but argues that the alleged *Brady* violation, which the Petitioner asserts he detected in 2023, was sufficient "to excuse the statute of limitations" and "open the door for [the] Petitioner to present his innocence claim via evidentiary hearing with the appointment of counsel."

As an initial matter, we note that it is the trial court's order, and not the State's appellate brief, that we are reviewing in this appeal. The Petitioner mentioned the alleged *Brady* violation in the section of his petition addressing his claim of facts in support of his actual innocence. Specifically, the Petitioner asserted that the "Milan Police Department hid [a police lieutenant's'] handwritten notes" about Diane Sturdivant's statement to the officer "because the evidence was favorable to the defense." The Petitioner stated that he received additional discovery material from the State in 2013 containing the handwritten police notes, but that it took him "a decade to read all the Discovery Materials through due diligences to compare" the original discovery he received to the 2013 discovery materials.

The alleged *Brady* violation was but one of numerous allegations the Petitioner included in his lengthy petition. Although the trial court did not specifically address the alleged *Brady* violation in its order, it implicitly rejected it by finding that the Petitioner

failed to demonstrate that he was entitled to relief based on any of the grounds raised in the petition. We conclude that the trial court's summary denial of the petition was proper. Accordingly, we affirm the judgment of the trial court.

CONCLUSION

Based on our review, we affirm the summary denial of the petition.

s/ John W. Campbell
JOHN W. CAMPBELL, SR., JUDGE