

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE  
Assigned on Briefs June 23, 2015

**RALPH T. O'NEAL v. STATE OF TENNESSEE**

**Appeal from the Criminal Court for Hamilton County  
No. 292843 Don W. Poole, Judge**

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**No. E2014-02079-CCA-R3-PC – Filed July 15, 2015**

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Petitioner, Ralph T. O'Neal, appeals the trial court's order summarily dismissing his pro se petition for post-conviction, habeas corpus, and error coram nobis relief. We find that this case meets the criteria for affirmance pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. Accordingly, the judgment of the trial court is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed  
Pursuant to Rule 20, Rules of the Court of Criminal Appeals**

TIMOTHY L. EASTER, J., delivered the opinion of the Court, in which ALAN E. GLENN and ROBERT H. MONTGOMERY, JR., JJ., joined.

Ralph T. O'Neal, Terre Haute, Indiana, Pro Se.

Herbert H. Slatery III, Attorney General and Reporter; Ahmed A. Safeeullah, Assistant Attorney General; Neal Pinkston, District Attorney General, for the respondent, State of Tennessee.

**MEMORANDUM OPINION**

*Facts and Procedural Background*

Nearly 18 years ago, Petitioner pled guilty to driving without a license in Hamilton County General Sessions Court. According to Petitioner, he received a sentence of thirty days which was "suspended upon payment of fine [of ten dollars] and costs and good behavior for a period of eleven months and 29 days."

On September 22, 2014, Petitioner filed a pro se petition seeking relief pursuant to Tennessee Rule of Criminal Procedure 32(f), post-conviction, habeas corpus, and error coram nobis. In the petition, he alleged that his guilty plea was “unconstitutional and illegal” because he was not advised that his conviction could be used to enhance any subsequent state or federal sentence. He requested relief on the basis that the unconstitutional plea “ultimately led petitioner blindly into a[n] enhanced federal sentence.”

The trial court summarily dismissed the petition on September 24, 2014. In the order dismissing the petition, the trial court observed that Petitioner was not entitled to withdraw his guilty plea under Tennessee Rule of Criminal Procedure 32(f) because that rule is not applicable to guilty pleas made in General Sessions Court. Additionally, the trial court determined that petitioner’s request for post-conviction relief was untimely and that Petitioner failed to allege grounds which would toll the statute of limitations. The trial court also determined Petitioner failed to state a claim for habeas corpus relief because Petitioner did not show that he was restrained of his liberty. Lastly, the trial court determined Petitioner did not state a ground for error coram nobis relief.

Petitioner sought a timely appeal from the order dismissing the petition.

#### *Analysis*

Petitioner argues on appeal that the trial court improperly dismissed his petition for relief by preemptively screening the petition.

#### Post-Conviction Relief

Petitioner alleges that he was entitled to post-conviction relief because the “provisions should have been tolled due to the fact the enhancement waiver hadn’t been signed.” The State disagrees.

A petition for post-conviction relief must be filed within one 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 year of the date on which the judgment becomes final. T.C.A. § 40-30-102(a). Our legislature emphasized the fact that “[t]ime is of the essence of the right to file a petition for post-conviction relief,” *id.*, and provided only three narrow exceptions to the statute of limitations: (1) a new constitutional right with retrospective application; (2) new scientific evidence establishing actual innocence; and (3) the invalidation of convictions underlying an enhanced sentence. T.C.A. § 40-30-102(b). Additionally, our supreme court has held that due process may toll the statute of limitations under very narrow circumstances. *See Whitehead v. State*, 402 S.W.3d 615 (Tenn. 2013) (attorney misconduct or abandonment); *Seals v. State*, 23 S.W.3d 272

(Tenn.2000) (petitioner's mental incompetence); *Sands v. State*, 903 S.W.2d 297, 301 (Tenn. 1995) (later-arising grounds for relief). Petitioner pled guilty on July 16, 1997, and filed the petition for post-conviction relief on September 22, 2014, clearly outside the one-year statute of limitations. He has not alleged any fact which would toll the statute of limitations on either statutory or due process grounds. The trial court correctly dismissed the petition for post-conviction relief on the basis that it was untimely.

### Habeas Corpus Relief

Petitioner argues that he is entitled to habeas corpus relief because he is suffering a collateral consequence of the 1997 guilty plea in that his subsequent federal sentence was enhanced. "While there is no statute of limitations to bar the filing of a habeas corpus petition, the grounds upon which relief will be granted are limited in nature and scope." *Wyatt v. State*, 24 S.W.3d 319, 322 (Tenn. 2000). Habeas corpus relief "is available only when it appears from the face of the judgment or the record of the proceedings that a trial court was without jurisdiction to sentence a defendant or that a defendant's sentence of imprisonment or other restraint has expired." *Id.* In other words, habeas corpus relief is only available when the judgment is void, not merely voidable. *Taylor v. State*, 995 S.W.2d 78, 83 (Tenn. 1999). Tennessee law is clear that when a petitioner complains of a restraint on liberty that is a collateral consequence of a judgment, habeas corpus is not an appropriate avenue for seeking relief. *Hickman v. State*, 153 S.W.3d 16, 23 (Tenn. 2004); *Derron Guy v. State*, No. M2013-01851-CCA-R3-HC, 2014 WL 2462847, at \*2 (Tenn. Crim. App. May 29, 2014), *no perm. app. filed*. Petitioner's guilty plea was entered on July 16, 1997, and his sentence was suspended to probation. The trial court correctly denied habeas relief where Petitioner failed to show that he was restrained by a void judgment.

### Writ of Error Coram Nobis

Lastly, Petitioner insists he is entitled to relief through a writ of error coram nobis because the General Sessions Court "violated" statutes by approving an unknowing and involuntary guilty plea. Tennessee Code Annotated section 40-26-105 provides, in pertinent part:

Upon a showing by the defendant that the defendant was without fault in failing to present certain evidence at the proper time, a writ of error coram nobis will lie for subsequently or newly discovered evidence relating to matters which were litigated at the trial if the judge determines that such evidence may have resulted in a different judgment, had it been presented at the trial.

T.C.A. § 40-26-105(b). A petition for writ of error coram nobis must include:

(1) the grounds and the nature of the newly discovered evidence; (2) why the admissibility of the newly discovered evidence may have resulted in a different judgment had the evidence been admitted at the previous trial; (3) [that] the petitioner was without fault in failing to present the newly discovered evidence at the appropriate time; and (4) the relief sought by the petitioner.

*Freshwater v. State*, 160 S.W.3d 548, 553 (Tenn. Crim. App. 2004). A petition for coram nobis relief must be filed within one year after the judgment becomes final. T.C.A. § 27-7-103. Typically, for the purposes of coram nobis relief, a judgment becomes final thirty days after the entry of the judgment in the trial court if no post-trial motion is filed, or upon entry of an order disposing of a timely filed post-trial motion. *State v. Mixon*, 983 S.W.2d 661, 670 (Tenn. 1999). In General Sessions Court, a judgment becomes final after ten days. T.C.A. § 27-5-108. Petitioner filed his petition for relief almost sixteen years after the judgment in his case became final. His petition is untimely. Petitioner has shown no due process considerations that would require tolling the statute of limitations. *See Harris v. State*, 301 S.W.3d 141, 145 (Tenn. 2010) (citing *Workman v. State*, 41 S.W.3d 100, 103 (Tenn. 2001)). Furthermore, the grounds alleged by Petitioner are not cognizable for error coram nobis relief as they are in no way related to newly discovered evidence. Petitioner is not entitled to relief.<sup>1</sup>

### *Conclusion*

We determine, sua sponte, that this case meets the criteria of Rule 20 of the Rules of the Court of Criminal Appeals, which provides inter alia:

The Court, with the concurrence of all judges participating in the case, when an opinion would have no precedential value, may affirm the judgment or action of the trial court by memorandum opinion rather than by formal opinion, when:

The judgment is rendered or the action is taken in a proceeding before the trial judge without a jury, and such judgment or action is not a determination of guilt, and the evidence does not preponderate against the finding of the trial judge . . . and

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<sup>1</sup> Petitioner abandons his claim with respect to Tennessee Rule of Criminal Procedure 32(f) on appeal. *See Ronnie Jackson, Jr. v. State*, No. W2008-02280-CCA-R3-PC, 2009 WL 3430151, at \*6 n.2 (Tenn. Crim. App. 2009), *perm. app. denied* (Tenn. Apr. 16, 2010).

No error of law requiring a reversal of the judgment or action is apparent on the record.

*See Larry L. Preston v. State*, No. E2007-02458-CCA-R3-PC, 2008 WL 2448318, at \*2 (Tenn. Crim. App. June 18, 2008) (“[W]e point out that this Court’s use of Rule 20 to summarily affirm a lower court’s action is not limited to cases in which the State moves for such relief.”), *no perm. app. filed*. Because the issues now raised by Petitioner do not entitle him to relief, we find no error in the decision of the Criminal Court for Hamilton County to dismiss the petition for post-conviction, habeas corpus, and error coram nobis relief without a hearing and without the appointment of counsel. Accordingly, the judgment of the trial court is hereby affirmed in accordance with Rule 20.

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TIMOTHY L. EASTER, JUDGE