

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT JACKSON

Assigned on Briefs September 9, 2003

**ANTONIO BONDS v. STATE OF TENNESSEE**

**Appeal from the Criminal Court for Shelby County  
No. P-26982 Arthur T. Bennett, Judge**

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**No. W2003-00260-CCA-R3-PC - Filed November 14, 2003**

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GARY R. WADE, P.J., dissenting.

I fully agree with my colleagues that the Tennessee Rules of Appellate Procedure do not recognize a petition to rehear the denial by our supreme court of an application for permission to appeal. In several instances, our supreme court had observed that there is no authority for such a petition. See, e.g., John Wayne Slate, Jr. v. State, No. 03C01-9201-CR-00014 (Tenn., at Knoxville, Feb. 6, 1995) (stating that “a petition to rehear the denial of a Rule 11 application for permission to appeal is unknown to the Tennessee Rules of Appellate Procedure”). In this case, however, as in some others, our supreme court “denied” the petition, thereby acting on the request. Tennessee Code Annotated section 40-30-202(a) requires a post-conviction petition within one year of “the final action of the highest state appellate court to which an appeal is taken.” In Lease v. Tipton, 722 S.W.2d 379 (Tenn. 1986), our high court issued an opinion resulting from a petition to rehear its denial of an application for permission to appeal. Further, the Advisory Commission Comments to Tennessee Rule of Appellate Procedure 39 provide that the court “generally disfavors petitions to rehear following denials of applications for permission to appeal.” (Emphasis added.) The Comments do not indicate that such petitions are prohibited.

Because our supreme court took “action” on the petitioner’s petition to rehear by its denial thereof on February 11, 2002, and because the petition was filed on January 10, 2003, I would hold that the natural language of the act would permit this petition as timely filed. In my view, a reversal and remand would be warranted.

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GARY R. WADE, PRESIDING JUDGE