

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

JASON WARREN ALLEN v. STATE OF TENNESSEE

Appeal from the Circuit Court for Cocke County

No. 28, 131 Richard R. Vance, Judge

February 9, 2004

No. E2003-02160-CCA-R3-PC

The Petitioner, Jason Warren Allen, appeals the trial court's dismissal of his petition for post-conviction relief. The State has filed a motion requesting that this Court affirm the trial court's denial of relief pursuant to Rule 20, Rules of the Court of Criminal Appeals. The petition is time-barred and the petitioner asserts no claim which would toll the statute of limitations. Accordingly, the State's motion is granted and the judgment of the trial court is affirmed.

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

James Curwood Witt, Jr., delivered the opinion of the court, in which Joseph M. Tipton and Norma McGee Ogle, joined.

Jason Warren Allen, pro se.

Paul G. Summers, Attorney General & Reporter; Thomas E. Williams, III, Assistant Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

According to his petition, the petitioner was convicted pursuant to a guilty plea of a drug-related offense and sentenced to eight years imprisonment.¹ Judgment was entered on December 4, 1998. No direct appeal was apparently taken. On February 18, 2003, the petitioner sought post-conviction relief. In his petition, he alleged that his conviction was the result of an involuntary guilty plea and that he received ineffective assistance of counsel at trial. The post-conviction court appointed counsel to file an amended petition, if necessary. On August 15, 2003, the post-conviction court summarily dismissed the petition as time-barred.

¹The petition states only that the conviction offense was "Schedule II Drugs: Cocaine." The judgment is not included in the record before us.

Tennessee Code Annotated Section 40-30-202 (a) provides that a person must petition for post-conviction relief within one year of the date on which the judgment became final or consideration of the petition will be time-barred. The statute emphasizes that “[t]ime is of the essence of the right to file a petition for post-conviction relief or motion to reopen established by this chapter, 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.* Due process demands, however, that the statute of limitations not be so strictly applied as to deny a person the opportunity to have his claim heard and determined at a meaningful time and in a meaningful manner. *State v. McKnight*, 51 S.W. 3d 559 (Tenn. 2001); *Seals v. State*, 23 S.W.3d 272 (Tenn.2000); *Burford v. State*, 845 S.W. 2d 204 (Tenn. 1992).

In the present case, the petition was filed nearly five years after entry of the challenged judgment, well beyond the one-year limitations period. Neither do any of the limited exceptions thereto apply. *See* Tenn. Code Ann. §40-30-202(b). The petitioner fails to assert any reason for his failure to pursue post-conviction relief in a timely manner.

Accordingly, the state’s motion is granted. The judgment of the post-conviction court is affirmed in accordance with Rule 20, Rules of the Court of Criminal Appeals.

JAMES CURWOOD WITT, JR., JUDGE