

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

AUGUST, 1997 SESSION

**FILED**

September 19, 1997

Cecil W. Crowson  
Appellate Court Clerk

MARTIN E. WALKER, )  
 )  
 Appellant, )  
 )  
 vs. )  
 )  
 STATE OF TENNESSEE, )  
 )  
 Appellee. )

No. 01CO1-9610-CR-00434

Davidson County

Honorable J. Randall Wyatt, Jr., Judge

(Post-Conviction)

FOR THE APPELLANT:

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OPINION FILED: \_\_\_\_\_

**AFFIRMED**

CURWOOD WITT  
JUDGE

## OPINION

The petitioner, Martin E. Walker, appeals pursuant to Rule 3 of the Tennessee Rules of Appellate Procedure from the Davidson County Criminal Court's denial of post-conviction relief. The petitioner was convicted in 1985 of murder of his father and received a life sentence. This court affirmed his conviction on direct appeal. State v. Martin E. Walker, No. 85-295-III (Tenn. Crim. App., Nashville, Sept. 29, 1987) perm. to appeal denied (Tenn. Nov. 30, 1987).

The petitioner filed this sixth petition for post-conviction relief on August 11, 1995. The trial court found that the issues had been previously determined or were not cognizable in a post-conviction proceeding and dismissed the petition on May 25, 1996. We affirm the trial court's dismissal of the instant petition although we do so on different grounds.

The petitioner has filed several previous post-conviction petitions. In the first, this court affirmed the trial court's dismissal of a petition which had alleged ineffective assistance of trial counsel. State v. Martin E. Walker, No. 89-45-III (Tenn. Crim. App., Nashville, Oct. 2, 1989). Two petitions were dismissed as barred by the statute of limitations. Martin E. Walker v. State, No. 01CO1-9402-CR-00055 (Tenn. Crim. App., Nashville, June 28, 1994); Martin E. Walker v. State, No. 01CO1-9105-CR-00154 (Tenn. Crim. App., Nashville, Oct. 3, 1991).<sup>1</sup>

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<sup>1</sup> The record indicates that the trial court dismissed two additional petitions which the petitioner did not appeal. The current petition is Walker's sixth.

The petition presently before this court was filed August 11, 1995, and is, therefore, controlled by the Post-Conviction Procedure Act of 1995. Tenn. Code Ann. § 40-30-201 compiler's notes (1996 Supp.). The act contemplates the filing of only one petition for post-conviction relief attacking a single judgment. Tenn. Code Ann. § 40-30-206(b). Once a petition has been resolved on its merits, the trial court "shall enter an order dismissing" any subsequent petition. Tenn. Code Ann. § 40-30-206(b).

The Act also provides that, under limited circumstances, a petitioner may move to reopen an earlier post-conviction petition. Tenn. Code Ann. § 40-30-217. A motion to reopen must state one of the grounds for reopening listed in Tennessee Code Annotated Section 40-30-217(a), set out a factual basis for the claim, and be supported by an affidavit supporting the factual allegations. Tenn. Code Ann. § 40-30-217(b). If the trial court denies the motion, the petitioner has no right to appellate review; however, within ten days of the denial, the petitioner may apply to this court for permission to appeal. Tenn. Code Ann. § 40-30-217(c).

At least one of petitioner's requests for post-conviction relief was adjudicated on its merits. See State v. Martin E. Walker, No. 89-45-III (Tenn. Crim. App., Nashville, Oct. 2, 1989). As the petitioner did not file a motion to reopen in accordance with Section 40-30-217, the petition was subject to summary dismissal. The trial court properly dismissed the petition.<sup>2</sup>

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<sup>2</sup> We note that petitioner has raised for the first time in this appeal an issue concerning the reasonable doubt instruction the trial court gave the jury. He bases his argument partially on Rickman v. Dutton, 864 F. Supp. 686 (M.D. Tenn 1994). We express no opinion as to the constitutionality of the jury instructions given at trial since the record before us is inadequate for such a review and the issue is not properly before this court. Tenn. R. App. P. 3(b).

We affirm the trial court's dismissal of Walker's petition for post-conviction relief.

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CURWOOD WITT, Judge

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JOE G. RILEY, Judge

\_\_\_\_\_  
Judge (NEED NAME OF SPECIAL JUDGE. THANKS, MELISSA.)