

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

FILED
December 29, 1999
Cecil Crowson, Jr.
Appellate Court Clerk

DAVID STOVALL,)
Appellant,) C.C.A. NO. M1999- 00937-CCA-R3-PC
VS.) (No. 7482 Below)
STATE OF TENNESSEE,) MAURY COUNTY
Appellee.) The Hon. Jim T. Hamilton
) (Dismissal of Post-Conviction Petition)
) **AFFIRMED PURSUANT TO RULE 20**

ORDER

This matter is before the Court upon the state's motion requesting that the judgment in the above-styled cause be affirmed pursuant to Rule 20, Tennessee Court of Criminal Appeals Rules. Having reviewed the petitioner's brief, the state's motion, and the record on appeal, the Court finds that the motion is well taken.

On January 6, 1992, the petitioner pled guilty to one count of aggravated robbery, two counts of aggravated kidnapping, two counts of aggravated rape, and two counts of aggravated assault, and he received an effective sentence of 35 years in the Tennessee Department of Correction. Thereafter, on August 19, 1992, the petitioner filed a petition for post-conviction relief. The trial court dismissed the petition on January 11, 1994, and the judgment was affirmed by this Court on appeal. See David Stovall v. State, No. 01C01-9401-CC-00022 (Tenn. Crim. App., at Nashville, Jan. 5, 1995). No application for permission to appeal was filed with the Supreme Court.

Subsequently, on January 25, 1999, the petitioner filed a "Motion for Delayed Appeal," which was denied by the trial court on August 11, 1999. The petitioner now appeals the trial court's ruling. Specifically, he contends that he is entitled to a delayed application for permission to appeal to the Supreme Court because post-conviction counsel failed to file an application for permission to appeal pursuant to T.R.A.P. 11 and failed to withdraw as counsel pursuant to T.R.A.P. 14.

As pointed out by the state, a delayed appeal may be granted under T.C.A. §

40-30-213 when a petitioner has been denied his right to appeal from his original conviction. See Rule 28, § 9(D). The statute does not allow for delayed appeals from the denial of post-conviction relief. Moreover, the 1995 Post-Conviction Procedure Act does not contemplate the filing of successive petitions. The filing of only one petition for post-conviction relief attacking a single judgment is contemplated by T.C.A. § 40-30-202(c). Finally, the petitioner was not entitled to effective assistance of counsel in a post-conviction proceeding. House v. State, 911 S.W.2d 705 (Tenn. 1995).

Accordingly, this Court finds that the state's motion to affirm the judgment should be granted.

IT IS, THEREFORE, ORDERED that the state's motion to affirm the judgment of the trial court under Rule 20, Tennessee Court of Criminal Appeals Rules, is granted, and the judgment of the trial court is affirmed. It appearing that the petitioner is indigent, costs of these proceedings are taxed to the state.

JERRY L. SMITH, JUDGE

CONCUR:

JOHN H. PEAY, JUDGE

DAVID H. WELLES, JUDGE