

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs May 17, 2017

LARRY PEOPLES v. STATE OF TENNESSEE

Appeal from the Criminal Court for Knox County
No. 107074 Bobby R. McGee, Judge

No. E2016-02315-CCA-R3-PC

The Petitioner, Larry Peoples, appeals the denial of his petition for post-conviction relief, challenging his conviction of violation of sex offender registration and sentence of one year. On appeal, the Petitioner argues that he is entitled to post-conviction relief because the underlying sex offense was vacated and he is no longer required to register as a sex offender. After a review of the record and applicable law, we affirm the post-conviction court's denial of relief.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

JOHN EVERETT WILLIAMS, J., delivered the opinion of the court, in which THOMAS T. WOODALL, P.J., and ROBERT W. WEDEMEYER, J., joined.

J. Liddell Kirk, Knoxville, Tennessee, for the appellant, Larry Peoples.

Herbert H. Slatery III, Attorney General and Reporter; Caitlin Smith, Assistant Attorney General; Charme Allen, District Attorney General; and Hector Sanchez, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTUAL AND PROCEDURAL HISTORY

We glean the following facts from the petition and hearing for post-conviction relief and the parties' briefs. In 2005, the Petitioner was convicted of attempted sexual battery and, thus, was required to register as a sex offender. Later that year, he pled guilty to a violation of sex offender registration. In 2008, the Petitioner received post-conviction relief for his attempted sexual battery conviction on the basis of prosecutorial

misconduct. His attempted sexual battery conviction was vacated, and he pled guilty to misdemeanor assault, which did not require him to register as a sex offender.

In his present petition for post-conviction relief where he seeks relief from his violation of sex offender registration conviction, the Petitioner argued that he is entitled to relief because (1) the State failed to disclose “favorable” evidence, (2) there is newly discovered evidence, and (3) his violation of sex offender registration conviction is unfairly prejudicial because his attempted sexual battery conviction was overturned and he should have, therefore, never been required to register as a sex offender. He also argued that the one-year statute of limitations should be tolled because his “conviction that made [him] a sex offender wasn’t overturned until December 21, 2008.” After the post-conviction court granted the Petitioner a hearing, the Petitioner waived his right to appear.

At the post-conviction relief hearing, the Petitioner presented no proof. Post-conviction counsel acknowledged before the court that the petition was filed outside the statute of limitations. Counsel conceded that he did not know of any law to support tolling of the statute of limitations by eight years. The post-conviction court found that there were not “appropriate reasons that explain[ed] the delay” and that “eight years would certainly seem to be an unreasonable period of time to keep the door open.” The post-conviction court dismissed the petition, finding that the Petitioner failed to meet his burden to establish grounds for relief.

ANALYSIS

On appeal, the Petitioner argues that “his private interests in removing the social stigma of a criminal conviction ... should outweigh ... the State’s interests in finality of the 2005 judgment...” The State argues that the Petitioner failed to present any legal support for his argument and that the post-conviction court properly dismissed his petition.

A petitioner is entitled to post-conviction relief if his conviction or sentence is void or voidable due to the abridgment of any constitutional right. T.C.A. § 40-30-103. The findings of fact made by a post-conviction court are conclusive on appeal unless the evidence preponderates against them. *Ward v. State*, 315 S.W.3d 461, 465 (Tenn. 2010). This court may not substitute its own inferences for those drawn by the post-conviction court, and questions concerning the credibility of witnesses, the weight and value of the evidence, and the factual issues raised by the evidence are to be resolved by the post-conviction court. *State v. Honeycutt*, 54 S.W.3d 762, 766-67 (Tenn. 2001). The trial court’s legal determinations are reviewed under a purely de novo standard with no presumption of correctness. *Fields v. State*, 40 S.W.3d 450, 457 (Tenn. 2001).

The petitioner bears the burden of proving the allegations of fact in the petition by clear and convincing evidence. T.C.A. § 40-30-110(f); *Ward*, 315 S.W.3d at 465. “Evidence is clear and convincing when there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence.” *Grindstaff v. State*, 297 S.W.3d 208, 216 (Tenn. 2009) (quoting *Hicks v. State*, 983 S.W.2d 240, 245 (Tenn. Crim. App. 1998)).

Under Tennessee Code Annotated section 40-30-102(a), a post-conviction petition 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 (1) year of the date on which the judgment became final.” The statute explicitly states, “The statute of limitations shall not be tolled for any reason, including any tolling or saving provision otherwise available at law or equity.” *Id.* It further stresses 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 the act and is a condition upon its exercise.” *Id.* In the event that a petitioner files a petition for post-conviction relief outside the one-year statute of limitations, the trial court is required to summarily dismiss the petition. T.C.A. § 40-30-106(b).

Subsection (b) of the statute sets forth the three narrow exceptions under which an untimely petition may be considered: (1) when the claim is based upon a final ruling of an appellate court establishing a constitutional right that was not recognized at the time of trial and which requires retroactive application; (2) whether the claim is based upon new scientific evidence establishing that the petitioner is innocent; and (3) when a previous conviction that was not a guilty plea and which was used to enhance the petitioner’s sentence has been held to invalid. T.C.A. § 40-30-102(b). In addition to the three narrow statutory exceptions, the post-conviction court must also consider an otherwise untimely petition if the application of the statute of limitations would be a denial of due process. *Seals v. State*, 23 S.W.3d 272, 278-79 (Tenn. 2000).

[B]efore a state may terminate a claim for failure to comply with procedural requirements such as statutes of limitations, due process requires that a potential litigant be provided an opportunity for the “presentation of claims at a meaningful time and in a meaningful manner.”

Id. at 277-78 (quoting *Burford v. State*, 845 S.W.2d 204, 207 (Tenn.1992)).

In *Whitehead v. State*, our supreme court identified three circumstances in which due process requires tolling the post-conviction statute of limitations. 402 S.W.3d 615, 623 (Tenn. 2013). The first of the three circumstances involves claims for relief that arise after the statute of limitations has expired. *Id.* The second due process basis for

tolling the statute of limitations involves prisoners whose mental incompetence prevents them from complying with the statute's deadline. *Id.* at 20-21. The third exception is when attorney misconduct necessitates the tolling of the statute of limitations. *Id.* at 21. Essentially, due process serves to toll the post-conviction statute of limitations for petitioners who face circumstances beyond their control, such as the circumstances enumerated above, which preclude them from actively raising their post-conviction claims. *Williams v. State*, 44 S.W.3d 464, 469 (2001). The principles of due process are flexible, requiring a balancing of the petitioner's liberty interest against the State's finality interests. *Sample v. State*, 82 S.W.3d 267, 273-74 (Tenn. 2002).

Our supreme court noted that “[a] petitioner is entitled to due process tolling upon a showing (1) that he or she has been pursuing his or her right diligently, and (2) that some extraordinary circumstances stood in his or her way and prevented timely filing. *Whitehead*, 402 S.W.3d at 631 (citations omitted). The court made clear that the standard for pursuing one's rights diligently did “not require a prisoner to undertake repeated exercises in futility or to exhaust every imaginable option, but rather to make reasonable efforts” to pursue the claim. *Id.* (citations omitted). However, the court emphasized that due process tolling “must be reserved for those rare instances where, due to circumstances external to the party's own conduct, it would be unconscionable to enforce the limitation period against the party and gross injustice would result.” *Id.* at 631-32 (citations omitted). The threshold for triggering this form of relief is “very high, lest the exceptions swallow the rule.” *Id.* at 632 (citations omitted).

As an initial matter, there is no dispute in this case that the petition for post-conviction relief was filed outside the applicable one-year statute of limitations. The post-conviction court found that the Petitioner failed to present any proof that due process would require tolling of the statute of limitations. We hold that nothing in the record preponderates against the post-conviction court's findings. *Ward*, 315 S.W.3d at 465. We also hold that nothing in the record would suggest that any other exception to the one-year statute of limitations should apply. Accordingly, the post-conviction court properly denied the Petitioner post-conviction relief petition.

CONCLUSION

Based on the foregoing, we affirm the judgment of the post-conviction court.

JOHN EVERETT WILLIAMS, JUDGE