

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE  
April 29, 2008 Session

**DANNY JAY BRANAM v. STATE OF TENNESSEE**

**Appeal from the Criminal Court for Knox County  
No. 60721 Richard R. Baumgartner, Judge**

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**No. E2007-01542-CCA-R3-PC - Filed August 27, 2008**

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The petitioner, Danny Jay Branam, appeals the Knox County Criminal Court's dismissal of his petition for post-conviction relief from his convictions of felony murder, armed robbery, and conspiracy, for which, his petition states, he is serving sentences of life plus sixteen years in the Department of Correction. He claims the trial court erroneously dismissed the petition as untimely. We hold that his petition was barred by the one-year statute of limitations, and we affirm the judgment of the trial court.

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

JOSEPH M. TIPTON, P.J., delivered the opinion of the court, in which THOMAS T. WOODALL and ALAN E. GLENN, JJ., joined.

Andrew N. Hall, Wartburg, Tennessee, for the appellant, Danny Jay Branam.

Robert E. Cooper, Jr., Attorney General and Reporter; John H. Bledsoe, Senior Counsel; Randall E. Nichols, District Attorney General; and Kenneth Irvine, Jr., Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

The petitioner was convicted of felony murder, armed robbery, and conspiracy in 1990. He was sentenced to death for the felony murder conviction. He appealed, and the supreme court reversed and remanded the case with instructions to vacate the death sentence and enter a sentence of life and for further findings on a claim of failure to disclose exculpatory evidence pursuant to Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194 (1963). See State v. Branam, 855 S.W.2d 563 (Tenn. 1993). The record reflects that the trial court's order resentencing the defendant and resolving the Brady claim adversely to him was filed on April 4, 1995. The defendant filed a petition for post-conviction relief on May 24, 1996, having mailed it from prison a day earlier. On June 8, 2007, the trial court entered an order dismissing the petition as untimely. The petitioner has appealed that order.

We consider first the state's claim that the petitioner did not file a notice of appeal within thirty days of the entry of the adverse judgment. See Tenn. R. App. P. 4(a). It is the obligation of the petitioner to perfect his appeal properly and to demonstrate that the interests of justice merit waiver of a late-filed notice of appeal. Id. The judgment from which the petitioner seeks to appeal was filed June 8, 2007, and his counsel mailed the notice of appeal on July 6, 2007, and it was filed by the trial court on July 10, 2007. The petitioner has offered no explanation for his untimely notice of appeal or how the interests of justice would necessitate waiver of the timeliness requirement. However, in this case, we will waive the timely filing of the notice of appeal.

Turning to the merits of the appeal, the petitioner acknowledges that his petition was filed more than one year after his conviction became final, despite the current one-year statute of limitations on post-conviction actions. See T.C.A. § 40-30-102(a). He claims, however, that due process requires that we apply the former post-conviction statute allowing three years to file a claim. See T.C.A. §40-30-102(a) (1990) (repealed 1995). He reasons that because the former statute was in effect when his conviction became final and the new statute was enacted a few weeks later, he should receive the benefit of the three-year statute of limitations. We disagree. This court has rejected an identical claim. See, e.g., Carothers v. State, 980 S.W.2d 215 (Tenn. Crim. App. 1997); cf. Carter v. State, 952 S.W.2d 417 (Tenn. 1997) (holding that new post-conviction act did not revive statute of limitations for petitioners whose three-year statute of limitations under the old act had already expired). We hold that the trial court properly dismissed the petition as untimely.

In consideration of the foregoing and the record as a whole, the judgment of the trial court is affirmed.

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JOSEPH M. TIPTON, PRESIDING JUDGE