

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE v. CLEO PATTERSON

**Appeal from the Circuit Court for Montgomery County
Nos. 25066A, 040663, 040991 John H. Gasaway, III, Judge**

No. M2006-01692-CCA-R3-CD - Filed July 16, 2007

The Petitioner, Cleo Patterson, appeals the trial court's denial of his petition for writ of error coram nobis and motion to reopen 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. We conclude the State's motion has merit. Accordingly, the motion is granted and the judgment of the trial court is affirmed pursuant to Rule 20, Rules of the Court of Criminal Appeals.

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

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which DAVID H. WELLES and JERRY L. SMITH, JJ., joined.

Cleo Patterson, pro se.

Robert E. Cooper, Jr., Attorney General and Reporter; Elizabeth B. Marney, Assistant Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

On November 9, 1987, the Petitioner was convicted of robbery with a deadly weapon, aggravated kidnaping, assault with intent to commit first degree murder and grand larceny and received a life sentence plus seventy-five years. On April 5, 2006, the Petitioner filed a petition for writ of error coram nobis contending that the attorneys representing him in these cases were ineffective. On May 25, 2006, the Petitioner filed an amendment to the petition for writ of error coram nobis. On June 5, 2006, the Petitioner filed a document entitled "Amended Notice to Courts of Defendants Ineffective Assistance of Couns[e]l Against Attorney of Record." Specifically, the Petitioner claimed that his counsel advised him that his felony convictions would be reduced to misdemeanors upon his successful completion of a drug program, but this did not occur. On June 27, 2006, the trial court entered an order denying the Petitioner's petition. The trial court noted that the Petitioner's initial pleading was incorrectly entitled a petition for error coram nobis because the

Petitioner's allegations, if proved, would constitute ineffective assistance of counsel which the writ of error coram nobis is not designed to remedy. Accordingly, the trial court treated the Petitioner's initial petition and subsequent amendments as a petition for post-conviction relief. The trial court then dismissed the petition as untimely. The Petitioner filed a timely notice of appeal.

We note that the trial court correctly treated the Petitioner's petition as one for post-conviction relief. Further, Tennessee Code Annotated section 40-30-102(a) provides that a petition for post-conviction relief must be filed within one year from final judgment. Under the Post-Conviction Procedure Act, exceptions to the statute of limitations are set forth. These exceptions include the following: (1) claims based upon a new rule of constitutional law applicable to a petitioner's case; (2) claims based upon new scientific evidence showing innocence; and (3) claims based upon sentences that were enhanced because of a previous conviction and the previous conviction was subsequently found to be illegal. *See* T.C.A. § 40-30-102(b)(1)-(3) (2003).

The Petitioner filed his petition beyond the one-year statute of limitation. The record indicates that the Petitioner pled guilty to the offenses at issue in 1989 and 1999 but did not file his petitions alleging the ineffective assistance of counsel until 2006. The Petitioner has failed to assert any of the exceptions for tolling the statute. He cites no new constitutional rule, refers to no new scientific evidence, and makes no claim that an earlier conviction has been overturned. *Id.; see also* T.C.A. § 40-30-106(g) (2003). Thus, no grounds exist as an exception to the statute of limitations.

Accordingly, the State's motion is hereby granted. The judgment of the trial court is affirmed in accordance with Rule 20, Rules of the Court of Criminal Appeals.

ROBERT W. WEDEMEYER, JUDGE