

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

DUANE E. NOLAND v. STATE OF TENNESSEE

**Direct Appeal from the Criminal Court for Davidson County
No. 2001-B-1137 Steve R. Dozier, Judge**

No. M2006-00449-CCA-R3-PC - Filed November 3, 2006

Petitioner, Duane E. Noland, appeals the trial court's denial of his petition for post-conviction relief. The State has filed a motion pursuant to Rule 20, Rules of the Court of Criminal Appeals of Tennessee, for this Court to affirm the judgment of the trial court by memorandum opinion. We grant the motion and affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Davidson County Criminal Court
Affirmed Pursuant to Rule 20 of the Tennessee Court of Criminal Appeals.**

THOMAS T. WOODALL, J., delivered the opinion of the court, in which JERRY L. SMITH and ROBERT W. WEDEMEYER, JJ., joined.

Duane E. Noland, Whiteville, Tennessee, *pro se*, for the appellant.

Paul G. Summers, Attorney General and Reporter; Jennifer L. Bledsoe, Assistant Attorney General; Victor S. (Torry) Johnson III, District Attorney General; and Pamela Sue Anderson, Assistant District Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

On March 3, 2002, Petitioner pled guilty and was convicted of sexual battery by an authority figure and sentenced as a Range III, career offender to serve fifteen years in the Department of Correction. No direct appeal was taken and on February 13, 2006, Petitioner filed a *pro se* petition for post-conviction relief. The trial court denied the petition, finding that it was barred by the one-year statute of limitations. Without addressing the issue of the statute of limitations, Petitioner appeals the trial court's ruling, arguing that he is entitled to post-conviction relief because he received ineffective assistance of counsel and that there is newly discovered evidence related to his case.

Pursuant to Tennessee Code Annotated section 40-30-102(a), a person in custody under a sentence of a court of this state must petition for post-conviction relief 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 year of the date on which the judgment becomes final. The statute emphasizes 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 such an action and is a condition upon its exercise.” T.C.A. § 40-30-102(a).

Additionally, Tennessee Code Annotated section 40-30-102(b), provides that the trial court does not have jurisdiction to consider a petition for post-conviction relief if it was filed outside the one-year statute of limitations unless (1) the claim in the petition is based upon a final ruling of an appellate court establishing a constitutional right that was not recognized as existing at the time of trial, if retrospective application of that right is required; (2) the claim in the petition is based upon new scientific evidence establishing that such petitioner is actually innocent of the offense or offenses for which the petitioner was convicted; or (3) the claim in the petition seeks relief from a sentence that was enhanced because of a previous conviction and such conviction in the case in which the claim is asserted was not a guilty plea with an agreed sentence, and the previous conviction has subsequently been held to be invalid. T.C.A. § 40-30-102(b).

In the present case, Petitioner argues that he is entitled to post-conviction relief based on newly discovered evidence because a DNA test was not performed on the victim. He further argues that he received ineffective assistance of counsel, that his statement was improperly admitted, that the victim’s statement was improperly admitted, and that the victim’s father fabricated the allegations against Petitioner. Despite his contentions, Petitioner pled guilty to sexual battery by an authority figure on March 11, 2002. His post-conviction petition was not filed until February 13, 2006, well beyond the one-year statute of limitations. As noted by the trial court, the grounds for relief alleged by Petitioner do not fall within any of the exceptions to the statute of limitations. Where there is no applicable exception, “the right to file a petition for post-conviction relief or a motion to reopen under this chapter shall be extinguished upon the expiration of the limitations period.” T.C.A. § 40-30-102(a). Accordingly, Petitioner has failed to state a cognizable claim for post-conviction relief.

The judgment was rendered in this matter in a proceeding before the trial court without a jury, and the judgment was not a determination of guilt, and the evidence does not preponderate against the finding of the trial court.

CONCLUSION

For the foregoing reasons, the judgment of the trial court is affirmed pursuant to Rule 20 of the Rules of the Court of Criminal Appeals.

THOMAS T. WOODALL, JUDGE