

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs August 20, 2008

**TYRICE L. SAWYERS v. STATE OF TENNESSEE**

**Appeal from the Criminal Court for Davidson County**  
**Nos. 94-A-153, 94-A-163, 94-B-780 Cheryl Blackburn, Judge**

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**No. M2007-02707-CCA-R3-PC - Filed November 20, 2008**

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The appellant, Tyrice L. Sawyers, appeals the dismissal of his petition for post-conviction relief as time-barred. The petitioner alleges his post-conviction appeal should be considered because he received ineffective assistance of counsel that amounted to a violation of due process. We affirm the decision of the trial court.

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

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and CAMILLE R. McMULLEN, J., joined.

Tyrice L. Sawyers, pro se.

Robert E. Cooper, Jr., Attorney General and Reporter; Clarence E. Lutz, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; and Brett Gunn, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

On August 19, 1994, the petitioner pleaded guilty in three cases to one count of forgery, one count of retaliation for past action, and two counts of statutory rape. He received an effective sentence of four years to be served in the Department of Correction.

On September 27, 2007, the petitioner filed a petition for post-conviction relief, alleging that he received ineffective assistance of counsel and that his plea was involuntary. On October 12, 2007, the trial court dismissed the petition as untimely. The petitioner, currently serving time in federal prison, tendered his notice of appeal to prison officials on October 19, 2007. On appeal, the petitioner continues to allege that he received ineffective assistance of counsel and that his plea was involuntary, and he adds that due process principles should have tolled the statute of limitations for his petition for post-conviction relief.

“[A] person in custody under a sentence of a court of this state must petition for post-conviction relief under this part within one (1) 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 the date on which the judgment became final. . . .” T.C.A. § 40-30-102(a) (2006). Given the post-conviction statute’s language conferring jurisdictional import to the timely filing of a petition, the question of timeliness must be resolved before any adjudication on the merits of the petitioner’s claims may properly occur. *See id.* § 40-30-102(b); *John Parker Roe v. State*, No. W2000-02788-CCA-R3-PC, slip op. at 4 n. 2 (Tenn. Crim. App., Jackson, Nov. 20, 2002), *perm. app. denied* (Tenn. 2003). If a petition is not filed within the one-year statute of limitations, it nevertheless may be considered if its allegations fall within three rather narrow exceptions:

(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. Such petition must be filed within one (1) year of the ruling of the highest state appellate court or the United States supreme court establishing a constitutional right that was not recognized as existing at the time of trial;

(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 asserted 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, in which case the petition must be filed within one (1) year of the finality of the ruling holding the previous conviction to be invalid.

T.C.A. § 40-30-102(b)(1)-(3) (2006). Additionally, due process principles may, in very limited circumstances, require tolling of the post-conviction statute of limitations. *See generally Seals v. State*, 23 S.W.3d 272, 277-79 (Tenn. 2000); *Burford v. State*, 845 S.W.2d 204, 208-09 (Tenn. 1992).

In *Craig Robert Nunn v. State*, No. M2005-01404-CCA-R3-PC (Tenn. Crim. App., Nashville, Mar. 17, 2006), this court addressed a post-conviction petitioner’s claim that the statute of limitations did not bar his petition filed six years after his guilty-pleaded convictions became final. Nunn claimed in his petition that his trial counsel told him that, by executing the plea agreement, he was “waiv[ing] all appeals and post-conviction actions” and that “he only recently learned that waiver of his post-conviction rights posed ethical concerns,” whereupon “he quickly filed a petition for post-conviction relief.” *Craig Robert Nunn*, slip op. at 3. The post-conviction court dismissed

Nunn's petition as being time-barred, based upon its finding that Nunn's plea agreement, by its terms, did *not* effectuate a waiver of post-conviction relief. *Id.*, slip op. at 4.

This court in *Craig Robert Nunn* reviewed *Williams v. State*, 44 S.W.3d 464 (Tenn. 2001), in which our supreme court addressed a seemingly time-barred post-conviction petition. *Williams* claimed that his trial counsel's actions had deprived him of a meaningful opportunity to seek post-conviction relief. In *Williams*, the court ordered an evidentiary hearing to determine

(1) whether due process tolled the statute of limitations so as to give the appellee a reasonable opportunity after the expiration of the limitations period to present his claim in a meaningful time and manner; and (2) if so, whether the appellee's filing of the post-conviction petition in October 1996 was within the reasonable opportunity afforded by the due process tolling. To summarily terminate his claim without further inquiry would be an "abridgement of both direct and post-conviction avenues of appeal--without ever reaching the merits of the appell[ee's] case--[and] would be patently unfair."

*Id.*, 44 S.W.3d at 471 (quoting *Crittenden v. State*, 978 S.W.2d 929, 932 (Tenn. 1998)).

Thus, in *Craig Robert Nunn*, this court framed the issue as follows:

The question in this case is, then, whether the [p]etitioner was, in fact, misled to believe that he could not pursue a post-conviction claim, and the sole inquiry is whether the limitations period is tolled because of due process concerns surrounding possible attorney misrepresentation. Further development of the record is required to determine the precise circumstances surrounding the [p]etitioner's guilty plea and his trial counsel's advice with regard to that guilty plea. Accordingly, we remand this case to the trial court for an evidentiary hearing to determine the circumstances surrounding the guilty plea, the advice given, and whether this precluded the [p]etitioner from filing a timely petition for post-conviction relief.

*Craig Robert Nunn*, slip op. at 7.

For the following reasons, we fail to see that *Williams* or *Craig Robert Nunn* mandates a remand for a hearing in the present case. When the issue presented is whether a petitioner was hampered from filing a timely post-conviction petition because of the misrepresentation of his trial counsel, *Williams* usefully tells us that due process requires only that the petitioner be afforded "a reasonable opportunity after the expiration of the limitations period to present his claim in a meaningful time and manner." See *Williams*, 44 S.W.3d at 471. In *Craig*

*Robert Nunn*, the petitioner averred in his petition that he had only recently learned that his trial counsel may have misspoken when he told Nunn that he was waiving his right to seek post-conviction relief and that, once he learned of the inaccuracy, he “quickly” filed his petition. The *Craig Robert Nunn* court felt that the petition’s allegations warranted a hearing on the issue of whether the bar of the statute of limitations would deprive him of a reasonable opportunity to present his substantive claims in a meaningful time and manner.

In the present case, however, the petitioner really does not account for the lapse of 13 years between his guilty pleas and his post-conviction petition filing. He failed to allege how the lapse of that time denied him a “reasonable” opportunity to perceive the availability of a post-conviction proceeding. The petition articulated neither when and under what circumstances the petitioner learned that he could seek post-conviction relief nor how much time expired between the petitioner’s learning of a cause of action and his filing of his petition. The petition does allege that the petitioner spent time in federal custody where he had no access to Tennessee legal materials, but it explained neither the period of time when this condition prevailed nor how it impacted him in failing to discern his post-conviction cause of action. Under these circumstances, we cannot say that due process principles require further judicial evaluation. We point out that *Williams* was “not intended to require a hearing on due process concerns every time a petitioner alleges that the untimeliness of his petition is due to his trial or appellate counsel’s negligence.” *Craig Robert Nunn*, slip op. at 6.

Accordingly, the dismissal of the petitioner’s motion for post-conviction relief is affirmed.

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JAMES CURWOOD WITT, JR., JUDGE