



12/18/97 MICHAEL JOE BOYD v. STATE TENNESSEE

1997 | Cited 0 times | Court of Criminal Appeals of Tennessee | December 18, 1997

ORDER DENYING PETITION TO REHEAR

On November, 19, 1997, the petitioner filed a petition to rehear claiming that this court incorrectly determined that the petitioner's Brady, Batson, and suggestive lineup claims were barred by the statute of limitations. We hold that a rehearing is not warranted in this case.

First, the petitioner claims that this court failed to recognize that the petitioner did not actually learn of the factual basis for his claims until after January 1995 when the state produced the records. He asserts that the grounds for relief did not arise until he learned of the facts supporting his claims when the state produced the records. He argues that his petition should not be barred under *Burford v. State*, 845 S.W.2d 204 (Tenn. 1992), because he filed his petition within a reasonable time after the factual basis for his claims was discovered. However, this court has earlier rejected the theory proposed by the petitioner. See *Sidney Porterfield v. State*, 1997 Tenn. Crim. App. LEXIS 323, *5, No. 02-C-01-9611-CR-00388, Shelby County (Tenn. Crim. App. Apr. 2, 1997).

In the alternative, the petitioner asserts that even if he should have known about the claims on January 29, 1992, when *Capital Case Resource Center v. Woodall*, 1992 Tenn. App. LEXIS 94, No. 01A01-9104-CH-00150, Davidson County (Tenn. App. Jan. 29, 1992), was decided, he could not have filed a request for the records under the Tennessee Public Records Act because he is a convicted felon. In support of his argument, the petitioner relies upon *Robin M. Cole v. Donal Campbell*, 1996 Tenn. App. LEXIS 823, No. 01A-01-9603-CH-00140, Hickman County (Tenn. App. Dec. 18, 1996) (Koch, J., Dissenting), app. granted (Tenn. May 5, 1997). He contends that the grounds for relief could not arise until the petitioner ceased to be a felon and became a citizen for purposes of the Tennessee Public Records Act. The petitioner argues that applying a "should have known" standard violates his due process rights. However, the petition does not allege that the petitioner could not have obtained the records through the assistance of others, as was done in *Woodall*. Therefore, he has not demonstrated that he was not given a reasonable opportunity under *Burford* to file his petition.

Accordingly, the petition to rehear is denied.

Joseph M. Tipton, Judge

CONCUR:

David G. Hayes, Judge



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William M. Barker, Judge

