

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
July 21, 2026 Session

FILED

08/19/2026

Clerk of the
Appellate Courts

ALMEER K. NANCE v. STATE OF TENNESSEE

Appeal from the Criminal Court for Knox County
No. 75969 Hector I. Sanchez, Judge

No. E2025-01258-CCA-R10-PC

The State of Tennessee appeals the post-conviction court's order granting Petitioner Almeer K. Nance's motion to reopen his post-conviction petition related to his convictions for first-degree felony murder, especially aggravated robbery, two counts of especially aggravated kidnapping, and three counts of aggravated robbery, for which he is serving an agreed sentence of life plus twenty-five years. The post-conviction court found that *State v. Booker*, 656 S.W.3d 49 (Tenn. 2022), recognized a new constitutional right applicable to Petitioner's twenty-five-year sentence. We reverse the judgment of the post-conviction court and remand for dismissal of the motion to reopen.

**Tenn. R. App. P. 10 Extraordinary Appeal; Judgment of the Criminal Court
Reversed; Case Remanded**

ROBERT L. HOLLOWAY, JR., J., delivered the opinion of the court, in which ROBERT H. MONTGOMERY, JR., and STACY L. STREET, JJ., joined.

Jonathan Skrmetti, Attorney General and Reporter; Courtney N. Orr, Deputy Attorney General; Charne P. Allen, District Attorney General; and Ta Kisha M. Fitzgerald, Assistant District Attorney General, for the appellant, State of Tennessee.

Melissa C. DiRado, Knoxville, Tennessee (in motion to reopen post-conviction proceedings and at post-conviction hearing); Eric M. Lutton, District Public Defender; and Jonathan P. Harwell and Carter Pack, Assistant District Public Defenders (in amended motion to reopen post-conviction proceedings, at post-conviction hearing, and on appeal); for the appellee, Almeer K. Nance.

OPINION

The underlying facts of this case were recounted by this court on direct appeal, as follows:

[O]n January 16, 1996, [sixteen-year-old Petitioner] and Robert Manning robbed at gunpoint Scott's Market in Knoxville. Two days later Manning picked up [Petitioner] at [Petitioner's] home. Amanda Goode accompanied the pair. In looking for a place to rob, the three finally came to a Radio Shack. Goode stayed in the car while Manning and [Petitioner], wearing toboggans/ski masks, entered the store. Both men were once more armed with guns, and in the process of the robbery, the store clerk, Joseph Ridings, was shot in the head. He subsequently died from this wound. Upon leaving the store, Manning and [Petitioner] rejoined Goode in a stolen Mazda, and the trio drove from the scene. They then discovered a raised garage door at the home belonging to Arthur and Patsy Sipf. Again, Manning and [Petitioner] exited the car. Finding the door from the garage to the living area of the home unlocked, the two proceeded into the house. Once more the pair donned toboggans/ski masks. They stole items from the home while holding both Sipfs on the floor at gunpoint. The offenders then forced the couple into the trunk of one of the Sipfs' cars. Having done so, Manning and [Petitioner] left in an automobile belonging to the Sipfs. Goode continued in the Mazda. At this point . . . [Petitioner] was apparently returned to his home[.]

. . . .

Some days thereafter, the authorities captured Manning and Goode in Kentucky and therefrom gained information about [Petitioner's] involvement in these crimes. The police arrested [Petitioner] in the early morning hours of January 22, 1996, and subsequently obtained a signed waiver and confession from him.

State v. Nance, No. E2000-00170-CCA-R3-CD, 2001 WL 1268499, at *1 (Tenn. Crim. App. Oct. 23, 2001), *perm. app. denied* (Tenn. Mar. 11, 2002). Before trial, the State filed a notice of intent to seek a sentence of life without the possibility of parole ("life without parole"). In October 1999, the jury convicted Petitioner of first-degree felony murder, especially aggravated robbery, two counts of especially aggravated kidnapping, and three counts of aggravated robbery. After the verdict was returned, Petitioner accepted an agreed sentence of life plus twenty-five years, with 100% service of the twenty-five years. *See*

Nance v. State, No. E2008-00857-CCA-R3-PC, 2009 WL 160919, at *1 (Tenn. Crim. App. Jan. 23, 2009), *perm. app. denied* (Tenn. Apr. 27, 2009).

On direct appeal, Petitioner contended that his police statement should have been suppressed, and this court affirmed the trial court's denial of the motion to suppress. *Nance*, 2001 WL 1268499, at *1. Petitioner subsequently filed a post-conviction petition alleging that he received ineffective assistance of counsel based upon trial counsel's advice that he not testify at trial and appellate counsel's failure to raise on direct appeal the sufficiency of the evidence and a severance issue. *Nance*, 2009 WL 160919, at *1.¹ The post-conviction court found that counsel did not render ineffective assistance, and this court affirmed. *Id.* at *5-7.

In November 2014, Petitioner filed a motion to reopen his post-conviction petition based upon the United States Supreme Court's decision in *Miller v. Alabama*, which held that the imposition of a mandatory sentence of life without parole on a juvenile convicted of homicide violated the Eighth Amendment's proscription against cruel and unusual punishment. 567 U.S. 460, 465 (2012). The post-conviction court found that the motion to reopen was filed outside the one-year limitations period specified in Tennessee Code Annotated section 40-30-117(a)(1) and that, even if the motion were timely, it would not entitle Petitioner to relief because he was not sentenced to life without parole. Petitioner did not appeal.

On November 18, 2022, the Tennessee Supreme Court issued *Booker*, a plurality opinion holding "that an automatic life sentence when imposed on a juvenile homicide offender with no consideration of the juvenile's age or other circumstances violates the prohibition against cruel and unusual punishment under the Eighth Amendment to the United States Constitution." *Booker*, 656 S.W.3d at 52. The court specifically limited the application of its ruling "to juvenile homicide offenders." *Id.* at 53. The court reasoned that "in juvenile first-degree murder cases, *and only in these cases*, a sentence is automatically imposed without considering age, the nature of the crime, or any other factors." *Id.* at 63 (emphasis added). The *Booker* court fashioned the following remedy for cases in which a juvenile homicide offender was automatically sentenced to life:

In remedying this constitutional violation, we exercise judicial restraint. We need not create a new sentencing scheme or resentence Mr. Booker—his life sentence stands. Rather, we follow the policy embodied in the federal Constitution as explained in *Montgomery v. Louisiana*, 577 U.S. 190, 136 S.

¹ Petitioner's post-conviction petition was initially dismissed for failure to prosecute; however, on appeal, this court reversed and remanded the case for a hearing on the merits. See *Nance v. State*, No. E2005-02265-CCA-R3-PC, 2006 WL 1575110, at *1 (Tenn. Crim. App. June 9, 2006).

Ct. 718, 193 L.Ed.2d 599 (2016[,]) and grant Mr. Booker an individualized parole hearing where his age and other circumstances will be properly considered. The timing of his parole hearing is based on release eligibility in the unrepealed version of section 40-35-501(h)(1), previously in effect, that provides for a term of sixty years with release eligibility of sixty percent, but not less than twenty-five years of service. Thus, Mr. Booker remains sentenced to sixty years in prison, and after he has served between twenty-five and thirty-six years, he will receive an individualized parole hearing where his age and other circumstances will be considered. Our limited ruling, applying only to juvenile homicide offenders, promotes the State's interest in finality and efficient use of resources, protects Mr. Booker's Eighth Amendment rights, and is based on sentencing policy enacted by the General Assembly.

Id. at 53.

On November 7, 2023, Petitioner filed a second motion to reopen the post-conviction petition (“the motion to reopen”), arguing that *Booker* had recognized a new retroactive constitutional right applicable to his case and that because his aggregate sentence exceeded fifty-one years and because he was not shown to be—and was not—“irreparably corrupt,” he was entitled to post-conviction relief. In a related issue, Petitioner argued that his agreed sentence was not knowingly, voluntarily, and intelligently entered because he did not understand that his parole eligibility was twenty-five to thirty-six years for the felony murder conviction rather than fifty-one years. Petitioner noted that, because *Booker* applied retroactively, it “merely established what the law had always been.” Petitioner further argued that his plea was not voluntary because the trial court erroneously ruled that the State would be allowed to present the aggravated robbery of Scott’s Market as an aggravating factor supporting life without parole. Petitioner also asserted that the sentencing agreement colloquy related to the agreed sentence was insufficient to ensure a knowing, voluntary, and intelligent waiver of his right to a sentencing hearing and that the sentencing agreement colloquy “wrongly indicated that the State was entitled to obtain a sentence of [life without parole].” Finally, Petitioner asserted that he received ineffective assistance of trial counsel because she failed to investigate and was unprepared to present mitigating evidence of Petitioner’s youth and because she provided “unreasonable advice as to the offered agreement.”

The State responded that *Booker* only applied to Petitioner’s first-degree murder conviction, not the twenty-five-year agreed consecutive sentence, and that the Tennessee Department of Correction (“TDOC”) had already afforded Petitioner the relief to which he was entitled under *Booker*.

At a hearing on the motion, post-conviction counsel stated Petitioner had witnesses to present and, “because of the nature of this case,” requested to file a post-hearing memorandum “explaining [that] our claims have sort of evolved a little bit and in our thinking about it and explaining how the witnesses and the evidence aligns with those claims rather than trying to argue it all now[.]”

The State briefly asserted its position that there was no basis upon which to reopen the post-conviction petition. The State was not asked for, and did not present, any evidence at the hearing.

Petitioner testified that he was forty-five years old and that, as a teenager, he resorted to committing crimes like stealing because his mother struggled with drug addiction and his family was impoverished. Petitioner acknowledged that he got into trouble during his early years in prison, although he asserted that none of his write-ups involved violent conduct. He noted that he joined a gang for protection but quit the gang in 2003. Petitioner stated that he began working “toward growth and change” after his younger brother was murdered by a sixteen-year-old boy during a robbery attempt that was similar to the murder for which Petitioner was imprisoned.

Petitioner testified that he had completed several prison programs; had graduated from the Tennessee College of Applied Technology with nine or ten certificates; had obtained “HVAC certifications and EPA licenses”; had graduated with an associate’s degree in business from Dyersburg State Community College; and would graduate with a bachelor’s degree in business from Lane College in October 2024. Petitioner stated that his future goals included finishing his education and “do[ing] things to try to prevent someone else from maybe making the same mistakes [he] made[.]”

Petitioner also offered testimony about his meetings with trial counsel; his understanding of his sentencing exposure and chance for release; his lack of knowledge about the procedure to impose a life without parole sentence and the possibility of concurrent sentencing; and his emotional state at the time he accepted the agreed sentence.

On cross-examination, Petitioner testified that, after his April 2024 parole hearing for his first-degree felony murder conviction, the parole board denied his request “[d]ue to the seriousness of the offense.” Petitioner acknowledged that, while in prison, he had been written up for failing drug tests; admitting that he was a high-ranking member of the Crips gang in 2018, although he did not remember making such a statement; having access to a cell phone and posting on Facebook in 2018; and engaging in “[s]exual misconduct.” Petitioner agreed that his last write-up for possession of tobacco products was on July 10, 2023. Petitioner recalled the parole board’s statement that “[t]here is a substantial risk that

the offender will not conform to the conditions of release.” Petitioner noted that he “wasn’t going to parole to be released” but rather to begin his twenty-five-year sentence.

Petitioner’s daughter, Jameerial Johnson, testified that she had maintained a close relationship with Petitioner throughout his incarceration and that he had been a positive influence in her life. Although she believed Petitioner deserved consequences for his actions, she stated that he had grown and changed positively. Petitioner’s sister, Tiffany Nance McGee, and his mother, Vickie Woodard, also testified about the challenging circumstances in which Petitioner grew up, their continuing relationships with him during his incarceration, his personal growth, and their support for him.

The post-conviction court instructed the parties to submit memoranda in support of their positions, and the court held a separate hearing at which the parties presented their arguments. On July 1, 2025, the post-conviction court entered an order granting Petitioner’s motion to reopen. The court stated that, “[f]or purposes of the record, this order applies only to the twenty-five[-year] sentence that was entered by way of a guilty plea less than an hour [after] Petitioner was found guilty . . . of first-degree felony murder.” The post-conviction court found as follows:

The *Booker* ruling clarified that juvenile offenders must be given an opportunity for parole, based on individualized consideration of their developmental history and the potential for rehabilitation. As such, [Petitioner]’s previous sentence, which did not provide for individualized consideration of his youth and potential for reform, fails to meet the constitutional standards established in *Booker*.

Given that the legal basis for these claims only became apparent following the *Booker* decision, it is appropriate for [Petitioner] to raise these issues now and the court will consider the substantive claims raised herein.

. . . .

Booker expanded the Eight[h] Amendment protections granted to juveniles sentenced to [life without parole] and non-[life without parole] sentences that preclude release for fifty-one (51) years. In [*Miller*, 567 U.S. 460], the Supreme Court clarified that these Eighth Amendment guarantees apply to certain sentences where the defendants are not irreparably corrupt.

577 U.S. at 479-480.² More concisely, the Eighth Amendment guarantees are violated when a juvenile is not irreparably corrupt and sentenced to imprisonment precluding release for fifty-one (51) years or more.

The post-conviction court found that Petitioner's agreed consecutive twenty-five-year sentence was disproportionate because it made his effective sentence more than fifty-one years and was imposed without a determination that he was irreparably corrupt. The court noted that Petitioner's progress and relationships while in prison "clearly indicates his capacity for reform." The post-conviction court further found that Petitioner's sentencing agreement "fails to meet the standards for a knowing and voluntary plea due to an inadequate plea colloquy, his lack of understanding compounded by emotional distress, and deficient performance by counsel." The post-conviction court noted that the trial court's statement about the State's "right" to sentence Petitioner to life without parole and the trial court's decision to allow evidence of the Scott's Market robbery as an aggravating factor were legal errors that misled Petitioner and "impaired" his decision making. The post-conviction court concluded, "Petitioner is entitled to relief in the form of reopening his post-conviction petition."

The State filed a motion for permission to file an interlocutory appeal pursuant to Tennessee Rule of Appellate Procedure 9. After a hearing, the post-conviction court denied the motion. The State subsequently sought permission to file an extraordinary appeal pursuant to Tennessee Rule of Appellate Procedure 10, which this court granted after concluding that immediate review of the post-conviction court's order was necessary.

Analysis

The State contends that the post-conviction court erred by granting the motion to reopen the post-conviction petition, arguing that *Booker*'s holding is limited to mandatory life sentences for first-degree murder convictions and that Petitioner has already received the relief to which he was entitled under *Booker*, i.e., an individualized parole hearing for his first-degree murder conviction after having served between twenty-five and thirty-six years of his sentence.

Petitioner responds that the post-conviction court properly granted the motion to reopen. Petitioner makes three overarching arguments: (1) that *Booker* provides for a constitutionally-mandated "meaningful opportunity to obtain release," and thus, any

² The post-conviction court's order refers to "*Montgomery*" here. See *Montgomery*, 577 U.S. at 190. However, *Montgomery* spoke only to *Miller*'s retroactive application, and the page numbers the post-conviction court cites correspond to *Miller*. *Miller*, 567 U.S. at 479-80 (noting that sentencing juveniles to life without parole involved distinguishing "the rare juvenile offender whose crime reflects irreparable corruption"). We presume that the court meant to cite to *Miller*.

effective sentence exceeding fifty-one years for a juvenile offender violates the Eighth Amendment unless the court makes a finding that the juvenile is “irreparably corrupt”; (2) that *Booker*’s retroactive application rendered his sentencing plea unknowing and unintelligent because neither he, the attorneys, nor the trial court knew that it was possible for him to receive a parole hearing on his life sentence at twenty-five years; and (3) that trial counsel provided ineffective assistance relative to the agreed sentence.

The Post-Conviction Procedure Act provides relief “when the conviction or sentence is void or voidable because of the abridgement of any right guaranteed by the Constitution of Tennessee or the Constitution of the United States.” Tenn. Code Ann. § 40-30-103. A petition for post-conviction relief must be filed “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 one (1) year of the date on which the judgment became final.” Tenn. Code Ann. § 40-30-102(a). Subsection 102(b) provides that “[n]o court shall have jurisdiction to consider” a post-conviction petition “filed after the expiration of the limitations period unless” one of three listed exceptions is applicable. Tenn. Code Ann. § 40-30-102(b). Relevant to this case, a petitioner may move to reopen a post-conviction petition when “[t]he claim in the motion 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.” Tenn. Code Ann. § 40-30-117(a)(1). The motion must be filed within one year of the ruling recognizing the constitutional right. *Id.* In addition, the facts underlying the claim, if taken as true, must establish by clear and convincing evidence that the petitioner is entitled to have the conviction set aside or the sentence reduced. *Id.* at § 40-30-117(a)(4); *Keen v. State*, 398 S.W.3d 594, 607 (Tenn. 2012).

We conclude that the post-conviction court improperly granted the motion to reopen. Initially, we note that the post-conviction court explicitly limited its ruling to Petitioner’s twenty-five-year consecutive sentence. This court has declined multiple times to extend *Booker*’s narrow ruling beyond mandatory life sentences imposed for first-degree murder. *See, e.g., State v. Lyons*, No. M2025-00230-CCA-R3-CD, 2026 WL 1862250, at *22 (Tenn. Crim. App. June 29, 2026) (noting that this court has “declined to expand *Booker* to consecutive sentencing issues”); *Moore v. State*, No. M2024-00547-CCA-R3-PC, 2025 WL 362418, at *4 (Tenn. Crim. App. Feb. 3, 2025) (concluding that *Booker* did not apply to the petitioner’s consecutive twenty-year sentence for especially aggravated robbery), *perm. app. denied* (Tenn. June 20, 2025); *Mallard v. State*, No. M2024-00265-CCA-R3-PC, 2024 WL 4904626, at *4 (Tenn. Crim. App. Nov. 27, 2024) (concluding that *Booker* did not apply to the petitioner’s consecutive twenty-two-year sentence for especially aggravated robbery), *perm. app. denied* (Tenn. Apr. 17, 2025); *State v. Brodie*, No. M2023-00135-CCA-R3-CD, 2024 WL 3272795, at *19 (Tenn. Crim. App. July 2,

2024) (concluding that *Booker* did not apply to the defendant’s aggravated robbery convictions), *no perm. app. filed*.

Consistent with these decisions concerning *Booker*’s substantive scope, this court has also held that *Booker* does not recognize the new constitutional right required by Code section 40-30-117(a)(1) when the challenged sentence falls outside *Booker*’s narrow holding. *See, e.g., Daniel v. State*, No. W2025-00039-CCA-R3-PC, 2025 WL 2682547, at *7-8 (Tenn. Crim. App. Sept. 19, 2025) (concluding that *Booker* did not confer a new constitutional right upon the petitioner relative to his two sentences of life without parole), *perm. app. denied* (Tenn. Mar. 2, 2026); *Mason v. State*, No. M2024-00287-CCA-R3-PC, 2024 WL 4615790, at *1 (Tenn. Crim. App. Oct. 30, 2024) (concluding that *Booker* did not confer a new constitutional right upon the petitioner relative to his guilty-pleaded conviction for second-degree murder with an agreed out-of-range sentence of thirty-five years), *perm. app. denied* (Tenn. Mar. 12, 2025).

In sum, we disagree with Petitioner’s assertion that *Booker* “extends both to [life without parole] . . . but also to a non-[life without parole] sentence that precludes release for fifty-one years.” Until such time as our supreme court may choose to revisit the issue, *Booker*’s reasoning and its remedy are limited to juvenile offenders sentenced to mandatory life sentences for first-degree murder convictions.³ As such, the post-conviction court erred by reopening the post-conviction proceedings by applying *Booker* to the twenty-five-year agreed sentence. We note that TDOC has already afforded Petitioner the relief *Booker* provides, which was a parole hearing on his first-degree murder conviction. Because *Booker* does not provide a basis upon which to reopen the post-conviction proceedings, we will not address the merits of Petitioner’s other issues.

Conclusion

In light of the foregoing and the record as a whole, we reverse the judgment of the post-conviction court and remand for dismissal of the motion to reopen post-conviction proceedings.

s/Robert L. Holloway, Jr.

ROBERT L. HOLLOWAY, JR., JUDGE

³ At oral argument, the State noted that, although Petitioner made a “compelling” public policy argument about the potential application of *Booker* to lengthy aggregate sentencing of juvenile offenders, this court cannot expand *Booker* beyond the narrow bounds set by our supreme court. We agree.