

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs June 23, 2026

**FILED**

08/05/2026

Clerk of the  
Appellate Courts

**STATE OF TENNESSEE v. ASATA D. LOWE**

**Appeal from the Circuit Court for Blount County**  
**Nos. C11329, C11330      David Reed Duggan, Judge**

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**No. E2025-01500-CCA-R3-CD**

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The Petitioner, Asata D. Lowe, appeals from the Blount County Circuit Court’s summary dismissal of his “Petition for Delayed Appeal.” On appeal, the Petitioner argues that Tennessee Code Annotated sections 39-13-202, -403, 40-30-102, Tennessee Rule of Appellate Procedure 3, and Tennessee Rule of Criminal Procedure 33 are unconstitutional as applied. Discerning no error, we affirm.

**Tenn. R. App. P. 3 Appeal as of Right;**  
**Judgment of the Circuit Court Affirmed**

STEVEN W. SWORD, J., delivered the opinion of the court, in which ROBERT H. MONTGOMERY, JR., and TIMOTHY L. EASTER, JJ., joined.

Asata D. Lowe, Wartburg, Tennessee, Pro Se.

Jonathan Skrmetti, Attorney General and Reporter; Park Huff, Assistant Attorney General; and Ryan K. Desmond, District Attorney General, for the appellee, State of Tennessee.

**OPINION**

**I.      FACTUAL AND PROCEDURAL HISTORY**

On March 18, 2000, the Petitioner was convicted of two counts of first degree premeditated murder and one count of especially aggravated robbery of the victims, Charles Hill and Sammy Garner. *State v. Lowe*, No. E2000-01591-CCA-R3-CD, 2002 WL 31051631, at \*1 (Tenn. Crim. App. Sept. 16, 2002), *perm. app. denied* (Tenn. Feb. 3, 2003). The trial court imposed an effective sentence of life incarceration plus twenty-five years. *Id.* The Petitioner appealed, challenging the sufficiency of the convicting evidence

and raising numerous claims of trial court error. *Id.* This court affirmed, and the Tennessee Supreme Court denied review. *Id.*

The Petitioner thereafter sought post-conviction relief, arguing that he received ineffective assistance of trial counsel, that he had discovered new exculpatory evidence, that the State failed to disclose favorable evidence, that the post-conviction court erred by refusing to permit him to “redraft an amended petition” and by failing to appoint expert witnesses, and that the cumulative effect of the errors entitled him to post-conviction relief. *Lowe v. State*, No. E2006-02028-CCA-MR3-PC, 2008 WL 631169, at \*1 (Tenn. Crim. App. Mar. 10, 2008), *perm. app. denied* (Tenn. Aug. 25, 2008). The post-conviction court denied relief; this court affirmed, and the Tennessee Supreme Court denied review. *Id.*

The Petitioner subsequently filed a litany of unsuccessful challenges to his convictions. *Lowe v. State*, No. M2008-01291-CCA-R3-HC (Tenn. Crim App. Dec. 9, 2008) (Order) (dismissing appeal from the denial of the Petitioner’s first petition for writ of habeas corpus) *no perm. app. filed*; *Lowe v. State*, No. M2009-00444-CCA-R3-HC, 2010 WL 143781, at \*1 (Tenn. Crim. App. Jan. 13, 2010) (affirming summary dismissal of the Petitioner’s second petition for writ of habeas corpus), *no perm. app. filed*; *Lowe v. State*, No. E2011-01640-CCA-R28-PC (Tenn. Crim. App. Sept. 16, 2011) (Order) (affirming denial of the Petitioner’s motion to reopen post-conviction proceedings), *perm. app. denied* (Tenn. Nov. 17, 2011); *Lowe v. Fortner*, No. E2011-00048-CCA-R3-HC, 2012 WL 1080274, at \*1-2 (Tenn. Crim. App. Mar. 30, 2012) (affirming denial of the Petitioner’s third petition for writ of habeas corpus), *perm. app. denied* (Tenn. Aug. 16, 2012); *Lowe v. Phillips*, No. E2017-01109-CCA-R3-HC, 2018 WL 706769, at \*1 (Tenn. Crim. App. Feb. 5, 2018) (affirming summary dismissal of the Petitioner’s fourth petition for writ of habeas corpus), *no perm. app. filed*; *Lowe-El v. State*, No. E2020-01335-CCA-R3-HC, 2022 WL 152021, at \*2 (Tenn. Crim. App. Jan. 18, 2022) (in a consolidated appeal, dismissing the Petitioner’s appeal from the summary dismissal of his fifth petition for writ of habeas corpus and affirming the summary dismissal of his petition for writ of error coram nobis), *no perm. app. filed*; *Lowe v. State*, No. E2022-00285-CCA-R3-HC, 2022 WL 13899444, at \*1 (Tenn. Crim. App. Oct. 24, 2022) (affirming summary dismissal of the Petitioner’s sixth petition for writ of habeas corpus), *no perm. app. filed*; *State v. Lowe*, No. E2024-00321-CCA-R3-CD, 2024 WL 4003352, at \*1 (Tenn. Crim. App. Aug. 30, 2024) (affirming summary dismissal of the Petitioner’s motions to correct a clerical mistake in his judgments of conviction pursuant to Tennessee Rule of Criminal Procedure 35 and to correct an illegal sentence pursuant to Tennessee Rule of Criminal Procedure 36.1), *no perm. app. filed*.

On September 20, 2024, the Petitioner filed a “Petition for Delayed Appeal.” *State v. Lowe*, No. E2024-01732-CCA-R3-CD, 2025 WL 1948848, at \*2 (Tenn. Crim. App. July 16, 2025), *no perm. app. filed*. In this filing, the Petitioner argued that he was denied direct

appellate review of his convictions because counsel failed to raise certain issues on direct appeal. *Id.* The post-conviction court treated the filing as a petition for post-conviction relief and summarily dismissed it. *Id.* On appeal, the Petitioner claimed, as pertinent to the present appeal, that the post-conviction court erred by summarily dismissing his petition because Tennessee Supreme Court Rule 28 section 8(D)(3) provided an exception to the Post-Conviction Procedure Act's one-petition rule. *Id.* at \*3. The Petitioner asserted that the post-conviction court was required "to separate the delayed appeal ground from the other grounds alleged in the petition prior to determining whether the Petitioner was denied an appeal." *Id.* (internal quotation marks omitted). This court determined that because the Petitioner "did not allege any other grounds that would entitle him to relief," "there was nothing for the post-conviction court to bifurcate from the petition for a delayed appeal." *Id.* (internal quotation marks omitted).

On July 28, 2025, the Petitioner filed a second "Petition for Delayed Appeal." *State v. Lowe*, No. E2025-01197-CCA-R3-CD (Tenn. Crim. App. Sept. 3, 2025) (Order). In this filing, the Petitioner asserted that trial counsel failed to file a motion challenging his indictment and the trial court's jurisdiction, that he was improperly detained for seventy-two hours before being presented to a magistrate, and other claims regarding his initial appearance before the magistrate. *Id.* The post-conviction court summarily dismissed the Petitioner's filing on August 12, 2025, and the Petitioner timely appealed. *Id.* On September 3, 2025, the Petitioner filed a motion to voluntarily dismiss his appeal, which this court granted. *Id.*

On August 29, 2025, the Petitioner filed a third "Petition for Delayed Appeal," which is the subject of the present appeal. In this filing, the Petitioner challenged the constitutionality of Tennessee Code Annotated section 40-30-102 as applied, contending that it deprived him of "the opportunity to attack [his] conviction and incarceration" on the basis of an alleged Sixth Amendment violation. He further contended that this limitation violated the Supremacy Clause, the Due Process Clause, and the Fourth, Fifth, Eighth, "and/or" the Fourteenth Amendments to the United States Constitution.

On September 16, 2025, the post-conviction court summarily dismissed the Petitioner's filing. The post-conviction court noted that the filing was entered "before the ink dried" on the post-conviction court's August 12, 2025 order denying the Petitioner's second "Petition for Delayed Appeal." The post-conviction court found that the Petitioner's filing failed to allege any factual basis as to how Code section 40-30-102 was unconstitutional; that the Petitioner had, regardless, failed to notify the Attorney General that he sought to challenge the statute's constitutionality; and, further, that the Petitioner had been afforded the opportunity to appeal his convictions and to challenge them via "numerous post-conviction procedures." This timely appeal followed.

## II. ANALYSIS

On appeal, the Petitioner challenges the constitutionality of Tennessee Code Annotated section 40-30-102 and asserts that the post-conviction court erred by summarily dismissing his “Petition for Delayed Appeal.” He asserts that his claims are not barred by the one-petition rule; he also argues that the post-conviction court erred by failing to permit him to amend his filing and by failing to set forth sufficient findings of fact and conclusions of law. He further contends, for the first time on appeal, that Tennessee Rule of Appellate Procedure 3, Tennessee Rule of Criminal Procedure 33, and Tennessee Code Annotated sections 39-13-202 and -403 are unconstitutional as applied. The State responds that the post-conviction court appropriately dismissed the Petitioner’s filing, that the one-petition rule bars his renewed attempts to seek post-conviction relief, and that his newly raised constitutional challenges are waived. We agree with the State.

The Post-Conviction Procedure Act provides relief only when a petitioner’s “conviction or sentence is void or voidable because of the abridgment of any right guaranteed by the Constitution of Tennessee or the Constitution of the United States.” Tenn. Code Ann. § 40-30-103. The Act further provides that a petition for post-conviction relief is barred unless 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.” *Id.* § -102(a). Pursuant to the one-petition rule, the Act “contemplates the filing of only one (1) petition for post-conviction relief,” and “[i]n no event may more than one (1) petition for post-conviction relief be filed attacking a single judgment.” *Id.* § -102(c). “If a prior petition has been filed which was resolved on the merits by a court of competent jurisdiction, any second or subsequent petition shall be summarily dismissed.” *Id.*

Our statutes and rules of post-conviction procedure do not contemplate motions for a delayed appeal such as the “Petition for Delayed Appeal” filed in this case. However, because the remedy sought by such a filing—a delayed appeal—is provided by the Post-Conviction Procedure Act, such filings are governed by the Post-Conviction Procedure Act and, accordingly, may be considered as a petition for post-conviction relief. *See id.* §§ -111(a), -113; *Handley v. State*, 889 S.W.2d 223, 224 (Tenn. Crim. App. 1994); *see also State v. Livingston*, No. M1998-00471-CCA-R3-CD, 1999 WL 1209521, at \*3 (Tenn. Crim. App. Dec. 17, 1999) (“The defendant’s ‘Motion for Permission to File Delayed Appeal’ is unknown to Tennessee procedure, except that the motion may be viewed as a ‘post-conviction’ proceeding to obtain relief in the form of a delayed appeal.”), *no perm. app. filed*. As such, filings such as the “Petition for Delayed Appeal” in this case are governed by the one-petition rule. Tenn. Code Ann. § 40-30-102(c); *Lowe*, 2025 WL 1948848, at \*2.

As noted above, the Petitioner timely filed a petition for post-conviction relief from his convictions, arguing that he received ineffective assistance of counsel, that he had discovered new exculpatory evidence, that the State failed to disclose favorable evidence, that the post-conviction court erred by refusing to permit him to “redraft an amended petition” and by failing to appoint expert witnesses, and that the cumulative effect of the errors entitled him to post-conviction relief. *Lowe*, 2008 WL 631169, at \*1, \*19. At the post-conviction evidentiary hearing, the Petitioner called witnesses and presented evidence in support of his claims. *Id.* at \*14-18. Following the presentation of this evidence, the post-conviction court resolved the issues the Petitioner raised on their merits by denying post-conviction relief; this court affirmed, and the Tennessee Supreme Court denied review. *Id.* at \*1. As we have previously concluded, the Petitioner was afforded a full and fair hearing on his petition for post-conviction relief. *Lowe*, 2025 WL 1948848, at \*3. Accordingly, the one-petition rule bars the Petitioner’s renewed attempts to seek post-conviction relief, and summary dismissal of his “Petition for Delayed Appeal” was appropriate.<sup>1</sup>

In his reply brief, the Petitioner asserts that the one-petition rule does not apply to his case. Raising much the same claim he did previously, *see id.*, he contends that Tennessee Supreme Court Rule 28 section 8(D)(3) “requires the [c]ourt to bifurcate the proceeding if the petitioner was unconstitutionally deprived of an appeal and was also entitled to relief on other grounds.” He argues he is entitled to relief because the State is “unlawfully imprisoning [him] in violation of [Code section] 39-13-302 because [Code sections] 39-13-202 [and] 39-13-403 are unconstitutional as applied because they deprive [him] the opportunity to be heard on the ground that he was denied the [f]reedom from bodily restraint and punishment without due process.”

Tennessee Supreme Court Rule 28 delineates the Tennessee Rules of Post-Conviction Procedure. Rule 28 section 8 provides that if the post-conviction court finds that a petition states a colorable claim for post-conviction relief, then the post-conviction court must schedule an evidentiary hearing on that petition within thirty days of the State’s response to the petition. Tenn. R. Sup. Ct. R. 28 § 8(A). The rule further provides the procedures for scheduling the hearing, the testimony of witnesses, and the structure of the hearing itself. *Id.* § 8. At a post-conviction evidentiary hearing,

[i]n the event that the petition alleges that petitioner was unconstitutionally deprived of an appeal and was also entitled to relief on other grounds, the

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<sup>1</sup> We note that the post-conviction court did not explicitly state that it treated the Petitioner’s “Petition for Delayed Appeal” as a petition for post-conviction relief. Nevertheless, we reiterate that the nature of the relief sought is provided by the Post-Conviction Procedure Act and that the one-petition rule applies to such filings. Moreover, the allegations in the filing would not have warranted treating it as a motion to reopen post-conviction proceedings. *See generally* Tenn. Code Ann. § 40-30-117.

court shall bifurcate the proceedings and determine first whether petitioner was denied an appeal, while holding the other claims in abeyance. Those claims shall be considered after the outcome of the delayed appeal if allowed, or after the appeal of the claim, if denied.

*Id.* § 8(D)(3).

Inasmuch as the Petitioner cites our opinion in his previous appeal as a basis for his claim that his filing qualifies as an “exception” to the one-petition rule, he is mistaken. Tennessee Supreme Court Rule 28 section 8(D)(3) governs the procedure for a hearing on a colorable claim for post-conviction relief and does not address the one-petition rule. Axiomatically, in order to avail himself of its bifurcation provisions, the Petitioner bears the burden of first presenting a colorable claim for post-conviction relief. A colorable claim is one which, “if taken as true, in the light most favorable to petitioner, would entitle the petitioner to relief under the Post-Conviction Procedure Act.” *Id.* § 2(H). “Bare allegations that a constitutional right has been violated and mere conclusions of law are not sufficient to warrant further proceedings.” *Arnold v. State*, 143 S.W.3d 784, 786 (Tenn. 2004) (citing Tenn. Code Ann. § 40-30-206(d)). As noted above, the Petitioner did not present his claim that the first degree murder and aggravated robbery statutes were unconstitutional to the post-conviction court in his “Petition for Delayed Appeal”; instead, he raised myriad challenges to Code section 40-30-102’s constitutionality and presented no factual basis in support thereof. Thus, the Petitioner failed to present a colorable claim for relief, and Tennessee Supreme Court Rule 28 section 8(D)(3) was inapplicable to his “Petition for Delayed Appeal.” The Petitioner is not entitled to relief on this basis.

The Petitioner also argues that the post-conviction court erred by summarily dismissing his “Petition for Delayed Appeal” because it “failed to comply” with Code sections 40-30-106(d) and -111(b). The Petitioner asserts that the post-conviction court erred by denying him the opportunity to cure any deficiencies in his filing before summarily dismissing it and by failing to set forth its legal conclusions regarding each ground for relief raised in the filing. As relevant here, Code section 40-30-106 governs a post-conviction court’s preliminary consideration of a post-conviction petition. Tenn. Code Ann. § 40-30-106(a). It requires that any petition seeking post-conviction relief “contain a clear and specific statement of all grounds upon which relief is sought, including full disclosure of the factual basis of those grounds.” *Id.* § -106(d). A petitioner’s “[f]ailure to state a factual basis for the grounds alleged shall result in immediate dismissal of the petition,” but in the event a pro se petitioner files a deficient petition, a post-conviction court “*may* enter an order stating that the petitioner must file an amended petition that complies with this section within fifteen (15) days or the petition will be dismissed.” *Id.* (emphasis added). A post-conviction court’s decision to permit the amendment of a petition in this respect is, thus, discretionary only. *Powell v. State*, 8 S.W.3d 631, 633

(Tenn. Crim. App. 1998). The Petitioner has not established any abuse of discretion in this respect, so he is not entitled to relief.

Additionally, Code section 40-30-111 governs the post-conviction court's final disposition of a post-conviction petition. As relevant here, it requires a post-conviction court to enter a final order upon the final disposition of the petition which "shall set forth . . . all grounds presented, and shall state the findings of fact and conclusions of law with regard to each ground." Tenn. Code Ann. § 40-30-111(b). The Petitioner asserts that the post-conviction court's order "completely fails to state the findings of fact with regard to each ground," particularly with regard to the "parts of the record attached to the petition." The Petitioner included, as attachments to his filing, a signed uniform affidavit of indigency dated October 28, 1998; the records of his initial appearance before the general sessions judge dated October 19, 1998; and the warrants binding his charges over to the grand jury dated November 2, 1998. The Petitioner alleged no facts pertinent to these documents and did not explain how they supported his claims for post-conviction relief; he merely presented them "[a]s evidence." In other words, the Petitioner failed to allege any factual basis as to how these documents supported his claim that Code section 40-30-102 was unconstitutional, which the post-conviction court correctly noted in its order denying relief.

The Petitioner also takes umbrage with the post-conviction court's devotion of considerable space in its order denying relief to a recitation of his previous litigation; however, as the post-conviction court noted, the Petitioner presented no factual basis for his argument, leading the post-conviction court to reason that it "must assume that [the Petitioner] continues to rely upon the same alleged factual grounds," given that he continued to rely upon the same documents as he attached to his previous petitions. After concluding that summary dismissal was appropriate based upon the filing's procedural deficiencies, the post-conviction court recounted the Petitioner's prior litigation and found that the Petitioner has "raised these issues over and over again in various styled motions and pleadings" and concluded that they were unavailing. The post-conviction court's order was thorough and considered the Petitioner's argument against Code section 40-30-102's constitutionality despite the filing's procedural deficiencies. The Petitioner is not entitled to relief on this basis.

The Petitioner also argues that Tennessee Rule of Appellate Procedure 3 and Tennessee Rule of Criminal Procedure 33 are unconstitutional as applied. He asserts that the rules of appellate and criminal procedure operate to unconstitutionally deny him the right to appeal from his original conviction. He also argues that the State is "falsely imprisoning" him, as defined by Code section 39-13-302, because Code sections 39-13-202, which defines and criminalizes first degree murder, and 39-13-402, which defines and criminalizes aggravated robbery, are unconstitutional as applied. He asserts that these statutes "deprive [him] of the opportunity to be heard on the ground that he was denied the

[f]reedom from bodily restraint and punishment without due process.” However, the Petitioner did not raise any of these constitutional challenges in his “Petition for Delayed Appeal,” so they are waived. Appellate relief extends only to those issues properly presented and preserved for such review, *see State v. Bristol*, 654 S.W.3d 917, 925 (Tenn. 2022), and “[i]ssues not addressed in the post-conviction court will generally not be addressed on appeal,” *Walsh v. State*, 166 S.W.3d 641, 645-46 (Tenn. 2005).

Perhaps recognizing that he neglected to present his constitutional challenges to Tennessee Rule of Appellate Procedure 3, Tennessee Rule of Criminal Procedure 33, and Code sections 39-13-202 and -402 to the post-conviction court first, the Petitioner requests that we review his claims for plain error. However, plain error relief is not available during post-conviction proceedings “[on] grounds that would otherwise be deemed waived or previously determined.” *Holland v. State*, 610 S.W.3d 450, 458 (Tenn. 2020) (quoting *Grindstaff v. State*, 297 S.W.3d 208, 219 (Tenn. 2009)) (internal quotation marks omitted). The Petitioner is not entitled to relief on this basis.

In his reply brief, the Petitioner also asserts that Tennessee Supreme Court Rule 28 section 9(D)(2)(a) permits review of his constitutional claims. As relevant here, Tennessee Supreme Court Rule 28 section 9 governs a post-conviction court’s disposition of a petition for post-conviction relief. Tenn. R. Sup. Ct. 28 § 9(A). It provides that a post-conviction court may grant a delayed appeal if it determines, following an evidentiary hearing, that a petitioner was deprived of the right to either file or request an appeal pursuant to Tennessee Rules of Appellate Procedure 3 or 11. *Id.* § 9(D)(1). It further provides that

[i]f the trial court determines that the petitioner was not deprived of the right to appeal pursuant to [Tennessee Rule of Appellate Procedure 3], this ruling may be challenged as part of any Rule 3 appeal from the trial court’s final judgment in the post-conviction proceedings. The Court of Criminal Appeals shall consider and resolve this issue along with any other issues raised in the post-conviction appeal.

*Id.* § 9(D)(2)(a). The Petitioner asserts that the Rule allows this court “to grant a delayed appeal as post-conviction relief where the petitioner, through no fault of his own[,] was denied second-tier review following his direct appeal.” To be sure, the Rule provides this court with jurisdiction to review a challenge to a post-conviction court’s determination of a post-conviction appeal, but it does not obviate our normal rules of issue preservation. It merely gives this court the authority to review the properly presented and preserved issues. Moreover, contrary to the Petitioner’s contention, he was not “denied second-tier review following his direct appeal.” As previously noted, the Petitioner received a full and fair hearing on his petition for post-conviction relief. *Lowe*, 2025 WL 1948848, at \*3. The Petitioner is not entitled to relief on this basis.

### III. CONCLUSION

Following our review of the record and based upon the foregoing analysis, we affirm the judgment of the post-conviction court.

s/ *Steven W. Sword*

STEVEN W. SWORD, JUDGE