

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs June 23, 2026 at Knoxville

FILED

08/19/2026

Clerk of the
Appellate Courts

FREDERICK DEMETRIUS DEBERRY v. STATE OF TENNESSEE

Appeal from the Circuit Court for Fayette County
No. 3737 J. Weber McCraw, Judge

No. W2025-01406-CCA-R3-PC

The Petitioner, Frederick Demetrius Deberry, argues on appeal that the post-conviction court erred by summarily dismissing his pro se “Motion to Amend Post-Conviction Petition” and “Petition of ‘Actual Innocence.’” He argues that House Bill 601¹ required the post-conviction court to amend and reconsider his filings and to grant a hearing on his asserted “new evidence.” The State counters that his claims are waived and, alternatively, that his pleadings were untimely and based on a misinterpretation of HB 601. Because Tennessee law requires properly supported appellate claims and a timely statutory vehicle for relief—and the Petitioner’s filings satisfy neither—the post-conviction court committed no error. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right;
Judgments of the Criminal Court Affirmed**

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

Frederick Demetrius Deberry, Whiteville, Tennessee, Pro Se.

Jonathan Skrmetti, Attorney General and Reporter; Julia A. Johnson, Assistant Attorney General; and Mark Davidson, District Attorney General, for the appellee, State of Tennessee.

OPINION

I. FACTUAL AND PROCEDURAL HISTORY

¹ House Bill 601 was enacted as Chapter 282 of the 2025 Public Acts, amending TCA 40-26-105.

In 1992, a Fayette County jury convicted the Petitioner of aggravated rape, and the trial court imposed a sentence of twenty years' incarceration, aligned consecutively to a separate federal sentence on related charges. *See State v. Deberry*, No. 02C01-9304-CC-00074, 1993 WL 492702, at *1 (Tenn. Crim. App. Dec. 1, 1993), *perm. app. denied* (Tenn. May 16, 1994). On direct appeal from the conviction proceedings, the Petitioner unsuccessfully claimed that the State failed to prove venue, that the State committed prosecutorial misconduct by excusing potential jurors on account of race, and that the sentence should not have been ordered to be aligned consecutively to the federal court sentence. *Id.* In November 2005, the Petitioner filed an unsuccessful "motion for new trial," alleging prosecutorial misconduct and ineffective assistance of counsel, which was also unsuccessful on appeal. *See State v. Deberry*, No. W2005-02843-CCA-R3-CD, 2006 WL 2040437, at *1 (Tenn. Crim. App. July 20, 2006), *perm. app. denied* (Tenn. Jan. 2, 2007). In May 2015, the Petitioner filed a petition for post-conviction relief raising claims of prosecutorial misconduct, ineffective assistance of counsel, insufficient evidence, and the denial of due process; the post-conviction court summarily dismissed the petition as untimely, and this court affirmed. *See Deberry v. State*, No. W2015-00951-CCA-R3-PC, 2016 WL 369390, at *1 (Tenn. Crim. App. Jan. 29, 2016), *no perm. app. filed*. Then, in August 2022, the Petitioner filed a motion to correct an illegal sentence pursuant to Tennessee Rule of Criminal Procedure 36.1, alleging that the trial court considered "unfounded and unsupported 'judge found' fact(s) to enhance his sentencing range," the trial court summarily dismissed the motion for various procedural deficiencies, and this court dismissed his appeal as untimely. *See State v. Deberry*, No. W2022-01530-CCA-R3-CD, 2023 WL 4450491, at *1 (Tenn. Crim. App. July 11, 2023), *perm. app. denied* (Tenn. Nov. 20, 2023). In December 2024, the Petitioner filed a petition for a writ of habeas corpus, which the habeas court summarily dismissed after finding that the Petitioner's claims had either been previously determined or were not cognizable in habeas corpus proceedings. *Deberry v. State*, No. W2025-00048-CCA-R3-HC, 2025 WL 3205507, at *1 (Tenn. Crim. App. Nov. 17, 2025), *no perm. app. filed*. On appeal, this court affirmed, concluding that the Petitioner had not shown that his challenged judgment was void or that his sentence had expired. *Id.* at *3.

On July 21, 2025, the Petitioner filed a pro se "Petition for Post-Conviction Relief Pursuant to House Bill 601² (T.C.A. § 40-30-501(1) and (2)[]) 'Actual Innocence,'" which the post-conviction court summarily dismissed as untimely on July 29, 2025. On August 4, 2025, the Petitioner filed a "Motion to Amend Post-Conviction Petition," which requested that the post-conviction court construe his July 2025 "Petition for Post-Conviction Relief" as a "Petition of Actual Innocence" rather than as a post-conviction petition. The Petitioner attached a "Petition of Actual Innocence" to this filing. On August 13, 2025, the Petitioner filed a "Motion for Relief from Judgment" pursuant to Tennessee

² We will hereafter refer to House Bill 601 as "HB 601."

Rule of Civil Procedure 60, requesting that the post-conviction court either set aside or strike its July 29, 2025 order dismissing his July 21, 2025 petition or “accept his Motion to Amend as timely filed.” On August 5, 2025, the post-conviction court summarily denied the Petitioner’s “Motion to Amend Post-Conviction Petition,” and on August 19, 2025, the post-conviction court summarily denied the Petitioner’s “Motion for Relief from Judgment.” On August 29, 2025, the Petitioner filed a timely notice of appeal from the post-conviction court’s order denying his August 5, 2025 “Motion to Amend Post-Conviction Petition.”

On November 10, 2025, the Petitioner filed a “Petition of ‘Actual Innocence’ and For Review of ‘New Scientific’ and Other ‘Evidence’ Pursuant to [HB 601] ([Tennessee Code Annotated sections 40-30-501, -502], Et. Seq).”³ The Petitioner claimed that HB 601 created Tennessee Code Annotated sections 40-30-501 and -502, amending the Post-Conviction Procedure Act to permit a new type of petition for actual innocence. The Petitioner’s Actual Innocence Petition sought an evidentiary hearing to review “new evidence” “that was not known by the judge or jury at the time guilt was determined or at the time of conviction,” which the Petitioner claimed would establish his actual innocence. The Petitioner identified expert testimony from his 1991 federal trial in Mississippi as “new evidence,” which he claimed was not provided to his trial counsel in his 1992 Tennessee aggravated rape trial. On November 25, 2025, the post-conviction court entered an order summarily denying the Actual Innocence Petition. On December 23, 2025, the Petitioner filed a timely notice of appeal from the post-conviction court’s November 25, 2025 order.

On February 23, 2026, this court granted the Petitioner’s request to consolidate the appeals from the post-conviction court’s August 5, 2025 order denying the Petitioner’s “Motion to Amend Post-Conviction Petition” and its November 25, 2025 order denying the Actual Innocence Petition. *See State v. Deberry*, No. W2025-01406-CCA-R3-PC (Tenn. Crim. App. Feb. 23, 2026) (order).

II. ANALYSIS

On appeal, the Petitioner raises six related issues claiming the post-conviction court abused its discretion and/or committed either structural error or procedural error in the summary dismissal of his pro se pleadings. First, the Petitioner contends that the post-conviction court abused its discretion when it denied his “Motion to Amend [his] Mis-Characterized Pleadings” without considering it in conjunction with HB 601⁴ and his right

³ We will hereafter refer to this petition as the “Actual Innocence Petition.”

⁴ Each of the Petitioner’s claims asserts that HB 601 was codified at Tennessee Code Annotated section(s) 40-30-501, and 40-30-502 and that the trial court failed to consider the Petitioner’s pleadings in conjunction with HB 601.

to be heard, pursuant to HB 601, in an Actual Innocence Petition. Next, the Petitioner contends that the post-conviction court committed structural error, in violation of his due process rights, as provided in Article I, section 8 of the Tennessee Constitution and the Fourteenth Amendment of the United States Constitution when it denied his “Motion to Amend [his] Mis-Characterized Pleadings,” his “Motion for Relief from Judgment, and his Actual Innocence Petition.” Lastly, the Petitioner claims the post-conviction court committed procedural error, in violation of his due process rights, as provided in Article I, section 8 of the Tennessee Constitution and the Fourteenth Amendment of the United States Constitution when it denied his Actual Innocence Petition, without considering the veracity of the “new scientific” and other “evidence,” presented in the petition.

The State responds that the Petitioner’s claims on appeal are waived due to inadequate briefing and, alternatively, that the post-conviction court properly denied the Petitioner’s pro se pleadings. The State argues that the Petitioner’s brief fails to comply with the procedural requirements of both Tennessee Rule of Appellate Procedure 27 and Rule 10 of the Tennessee Court of Criminal Appeals by failing to include citations to the record. The Petitioner replies that while he “unintentionally failed to include the citation to the record, he . . . did adequately present his claims and argument(s) in his pleading(s) legibly and appropriately.” The Petitioner further argues that his error “by no means prejudiced the State’s ability to adequately respond to the claims presented” in his principal brief and that his pro se pleadings should be held to a less stringent standard than attorney-filed pleadings. We agree with the State.

The basic rules of this court require an appellant to present a brief which sets forth “the contentions of the appellant with respect to the issues presented, and the reasons therefor, including the reasons why the contentions require appellate relief, with citations to the authorities and appropriate references to the record (which may be quoted verbatim) relied on.” Tenn. R. App. P. 27(a)(7); *see* Tenn. R. Ct. Crim. App. 10(b) (“Issues which are not supported by argument, citation to authorities, or appropriate references to the record will be treated as waived in this court.”). Simply, “[i]t is not the role of the courts, trial or appellate, to research or construct a litigant’s case or arguments for him or her, and where a party fails to develop an argument in support of his or her contention or merely constructs a skeletal argument, the issue is waived.” *Sneed v. Bd. of Prof’l Resp.*, 301 S.W.3d 603, 615 (Tenn. 2010). “Although pro se litigants are afforded more leniency than lawyers, they are . . . not entitled to shift the burden of litigating their case to the courts.” *State v. Benson*, No. W2017-01276-CCA-R3-CD, 2018 WL 4562928, at *3 (Tenn. Crim. App. Sept. 21, 2018) (internal quotation marks omitted) (quoting *Chiozza v. Chiozza*, 315 S.W.3d 482, 487 (Tenn. Ct. App. 2009)), *perm. app. denied* (Tenn. Feb. 25, 2019). The Petitioner does not dispute that he failed to include appropriate citations to the record in his brief. Accordingly, appellate review of the Petitioner’s claims is waived, and he is not entitled to relief from the post-conviction court’s judgments.

Waiver notwithstanding, the Petitioner has failed to establish that he is entitled to any relief. Initially, we note that the Petitioner's claim regarding the post-conviction court's denial of his "Motion for Relief from Judgment" is not properly before this court. Rule 3(f) of the Tennessee Rules of Appellate Procedure requires an appellant to specify the judgment from which relief is sought in his notice of appeal. *See* Tenn. R. App. P. 3(f); *see also State v. Godsey*, 165 S.W.3d 667, 670 (Tenn. Crim. App. 2004). Neither of the Petitioner's consolidated notices of appeal include a reference to the August 19, 2025 order denying his "Motion for Relief from Judgment." Thus, even absent waiver, the Petitioner's appellate claim regarding the August 19, 2025 order warrants dismissal pursuant to Rule 3(f).

The Petitioner initially filed a petition for post-conviction relief claiming that HB 601 created two new statutes, Tennessee Code Annotated sections 40-30-501 and -502. The Petitioner asserted the statutes expanded the Post-Conviction Procedure Act, allowing him to file an "Actual Innocence Petition." The Petitioner relied upon the same interpretation of HB 601 when he filed both his "Motion to Amend Post-Conviction Petition" and his Actual Innocence Petition, which are the subject of his appeal. However, the two Code sections the Petitioner contends were created by HB 601 do not exist. *See Dalton v. State*, No. M2025-01530-CCA-R3-ECN, 2026 WL 1847497, at *2-3 (Tenn. Crim. App. June 26, 2026), *no perm. app. yet filed*. HB 601 expanded the coram nobis statute, Tennessee Code Annotated section 40-26-105, which previously applied only to defendants who went to trial on their charges; the new law modified the existing statute to include cases in which a defendant entered a guilty, best interest, or no contest plea. The Petitioner's conviction for aggravated rape was based upon a conviction at a trial, which occurred in 1992. Thus, the Petitioner's ability to file a petition for writ of error coram nobis existed prior to the passage of HB 601. Thus, the trial court did not abuse its discretion when it determined that the pleadings as filed by the Petitioner did not provide him with any relief.

In his reply brief, the Petitioner claims that, prior to receiving the State's brief, he was unaware that the statute amended by HB 601 was Tennessee Code Annotated section 40-26-105, governing writs of error coram nobis. Petitioner claims for the first time in his reply brief that his Actual Innocence Petition should have been treated as a writ of error coram nobis by the post-conviction court.⁵ A petition for writ of error coram nobis must be filed within one year after the challenged judgment becomes final in the trial court.

⁵ Two opinions of this court have addressed similar claims unsuccessfully raised by a petitioner requesting relief pursuant to the writ of error coram nobis. *See Overton v. State*, No. M2025-01905-CCA-R3-PC, 2026 WL 2085437 (Tenn. Crim. App. July 20, 2026), *no perm. app. yet filed*; *Dalton*, 2026 WL 1847497.

Tenn. Code Ann. § 27-7-103. Thus, absent equitable tolling, the statute of limitations for a writ of error coram nobis in the Petitioner’s case expired well over thirty years ago.

In *Clardy v. State*, 691 S.W.3d 390, 399 (Tenn. 2024), the Tennessee Supreme Court elaborated on the standard for equitable tolling of petitions for coram nobis relief. The court noted that the “analysis for relief on the merits of the petition is separate and distinct from the analysis for whether the statute of limitations may be tolled.” *Id.* When a petitioner seeks the tolling of the one-year statute of limitations for an untimely-filed petition for a writ of error coram nobis,

the coram nobis court should first ascertain whether the petition cites new evidence discovered after expiration of the limitations period, and whether the coram nobis petition shows it was *filed no more than one year after the petitioner discovered the new evidence*. If so, the coram nobis court should assume *arguendo* the veracity of the new evidence cited in the coram nobis petition, for the purpose of assessing whether to toll the statute of limitations. To grant tolling, the coram nobis court must find that the new evidence would, if credited, clearly and convincingly show that the petitioner is actually innocent of the underlying crime, i.e., that the petitioner did not commit the crime.

Id. at 409 (emphasis added) (citing *Keen v. State*, 398 S.W.3d 594, 612 (Tenn. 2012)). Here, the Petitioner concedes that he received the transcripts of the “new evidence” in 1994; thus, had the post-conviction court treated the Petitioner’s pleading as a petition for a writ of error coram nobis, he admittedly could not establish that it was filed no more than one year after the Petitioner discovered the new evidence. Accordingly, the Actual Innocence Petition does not demonstrate that the Petitioner would be entitled to equitable tolling. The post-conviction court did not err by summarily dismissing the petition. The Petitioner is not entitled to relief.

III. CONCLUSION

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

s/ STEVEN W. SWORD

STEVEN W. SWORD, JUDGE