

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
October 6, 2026 Session

FILED

10/26/2026

Clerk of the
Appellate Courts

DEVAN DENTON v. STATE OF TENNESSEE

Appeal from the Criminal Court for Shelby County
No. 12-02872 Carlyn L. Addison, Judge

No. W2026-00485-CCA-R3-PC

The Petitioner, Devan Denton, filed an untimely petition for post-conviction relief claiming that he received ineffective assistance of counsel, that due process required the tolling of the statute of limitations based on alleged attorney abandonment, and that the statute of limitations should be tolled because he pursued federal habeas corpus relief before filing his post-conviction petition. After a hearing, the post-conviction court dismissed the petition, concluding that it was untimely and that the Petitioner failed to present a basis for due process tolling. The Petitioner appeals, claiming the post-conviction court erred in dismissing the petition. Finding no error, we affirm the judgment of the post-conviction court.

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

STEVEN W. SWORD, J., delivered the opinion of the court, in which ROBERT L. HOLLOWAY, JR., and MATTHEW J. WILSON, JJ., joined.

Lance R. Chism, Memphis, Tennessee, for the appellant, Devan Denton.

Jonathan Skrmetti, Attorney General and Reporter; Kelly M. Telfeyan, Assistant Attorney General; Steven J. Mulroy, District Attorney General; and Monica Timmerman, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. FACTUAL AND PROCEDURAL HISTORY

In 2015, a Shelby County jury convicted the Petitioner and his brother, Leon Denton, of three counts of aggravated rape, one count of facilitation of aggravated rape, one count of facilitation of especially aggravated robbery, and two counts of facilitation of aggravated robbery; a summary of the facts is contained in this court's opinion on direct appeal. *State v. Denton*, No. W2016-00910-CCA-R3-CD, 2017 WL 3600464 at *1, 4 (Tenn. Crim. App. Aug. 21, 2017), *perm. app. denied* (Tenn. Dec. 8, 2017). The trial court sentenced him to an effective sentence of fifteen years' incarceration. *Id.* at *5. The Petitioner filed a direct appeal, challenging the sufficiency of the evidence and claiming his right to a speedy trial was violated. *Id.* This court affirmed the Petitioner's convictions. *Id.* at *10.

In September 2018, the Petitioner filed a petition for writ of habeas corpus in federal court. In September 2021, the federal court entered an order dismissing the habeas petition, denying a certificate of appealability, and denying leave to appeal. *Denton v. Genovese*, No. 2:18-cv-02623-TLP (W.D. Tenn. Sept. 27, 2021), *certificate of appealability denied*, *Denton v. Clendenon*, No. 21-6003 (6th Cir. June 29, 2022), *rehearing en banc denied* (6th Cir. Sept. 27, 2022).

Subsequently, the Petitioner filed a pro se petition for post-conviction relief on October 31, 2024, alleging ineffective assistance of counsel. The post-conviction court appointed counsel on November 6, 2024. The State filed a response in opposition on January 8, 2025, requesting the post-conviction court dismiss the petition as untimely. On June 23, 2025, the Petitioner filed an amended petition, arguing that due process required tolling the statute of limitations because of attorney abandonment, citing *Whitehead v. State*, 402 S.W.3d 615, 631 (Tenn. 2013). Specifically, the Petitioner argued that appellate counsel failed to promptly notify him of the Tennessee Supreme Court's denial of his Rule 11 application and did not inform him of post-conviction procedures or deadlines. Alternatively, the Petitioner argued that the statute of limitations should be tolled because he pursued federal habeas corpus relief before filing his post-conviction petition.

On November 24, 2025, the post-conviction court held a hearing on the Petitioner's tolling claims. Appellate counsel testified that she was appointed on June 23, 2016. She testified that she did not have an independent recollection of many aspects of her representation of the Petitioner because so much time had passed, but she did not dispute the documentation in her file or in the record, on which she recognized her own signature. She agreed that the deadline for filing a timely direct appeal had already passed when she was appointed; accordingly, she filed a motion to file a late notice of appeal on July 1, 2016, which this court granted. Appellate counsel agreed that she filed the Petitioner's appellate brief, but she could not recall whether she provided the Petitioner with a copy. She further agreed that this court affirmed the Petitioner's convictions via written opinion on August 21, 2017, and she assumed she notified the Petitioner but had no independent

recollection of doing so. She stated that she filed an application to appeal the case to the Tennessee Supreme Court pursuant to Tennessee Rule of Appellate Procedure 11 on October 23, 2017.

Appellate counsel stated that she received a letter on September 12, 2017, from the Tennessee Board of Professional Responsibility (BPR) Consumer Assistance Program (CAP), before she filed the Petitioner's Rule 11 application. She agreed that the letter concerned the Petitioner's dissatisfaction with not having copies of his trial transcripts, parts of his records, or information about the status of his Rule 11 application. Appellate counsel testified she was unaware that the Petitioner filed a pro se Rule 11 application on September 20, 2017. She could not recall whether she discussed the Rule 11 application she filed with the Petitioner or sent him a copy. She stated that she had a copy of the October 23, 2017 denial of the Rule 11 application in her case file, but she did not recall when she received it. She did not recall whether she sent the Petitioner a copy of the denial when she received it, or whether she told him about his right to seek post-conviction relief. She also stated that she was unlikely to have discussed federal habeas corpus procedures with the Petitioner because she did not practice in federal court.

The Petitioner also introduced other letters he sent to CAP in May 2018, June 2018, July 2018, and August 2018, concerning his dissatisfaction with appellate counsel and his records. The BPR responded directly to the July and August letters and did not require responses from counsel. Appellate counsel identified a June 4, 2018 letter stating she sent a copy of the denial of the October 23, 2017 Rule 11 application to the Petitioner with the letter. She sent an additional letter dated June 22, 2018, explaining that she could not provide the Petitioner with the trial exhibits because the court owned them. She also advised the Petitioner that she had sent him copies of all his transcripts and that, after the court denied the October 23, 2017 Rule 11 application, she was no longer his attorney. She agreed that she did not mention the Petitioner's right to seek post-conviction relief in her letters and that her file showed no indication she had mentioned it to the Petitioner. Appellate counsel also testified that she was unaware the Petitioner had previously filed a federal habeas corpus petition until about a year before the post-conviction hearing.

The Petitioner testified that he did not know when appellate counsel was appointed and that she never sent him a copy of his appellate brief. He stated that this court sent him a copy of the brief and later a copy of its opinion affirming his convictions. He testified that he communicated with appellate counsel only in writing. He stated that he wrote to appellate counsel seeking his case file and transcripts, but when she did not respond, he wrote a letter to CAP expressing his dissatisfaction with her representation. The Petitioner testified that after he sent the letter to CAP, appellate counsel responded. He stated that appellate counsel sent him a letter in early June 2018 stating that the Tennessee Supreme Court had denied his Rule 11 application. He further stated that appellate counsel did not

send him copies of his transcripts until after the Tennessee Supreme Court denied his Rule 11 application. He stated that appellate counsel never discussed the Rule 11 application with him before filing it and that he also filed a pro se Rule 11 application because he was concerned about meeting the deadline. He testified that he did not learn that appellate counsel had also filed a Rule 11 application on his behalf until after it was denied. The Petitioner stated that appellate counsel did not inform him of the denial of the October 23, 2017 and pro se Rule 11 applications when they occurred, but he admitted that he was notified of the denial of the Rule 11 applications in “early” April 2018 after inquiring with the appellate courts regarding the status of his application and again in response to his subsequent letter to the appellate court dated April 23, 2018. He testified that there was no communication with appellate counsel from January to March 2018, but he stated that he subsequently received her letter, dated June 4, 2018, regarding the denial of the Rule 11 application; a second subsequent letter, dated June 22, 2018, in which appellate counsel responded to another CAP letter and advised the Petitioner that the case was closed and that she was no longer his attorney, was introduced as an exhibit.

The Petitioner testified that appellate counsel never advised him about his right to seek post-conviction relief or the associated procedures and deadlines. He further stated he did not learn about them independently or through anyone at the prison. The Petitioner testified that because he was indigent, he was unable to retain counsel after appellate counsel wrote to him stating she no longer represented him.

The Petitioner testified that another inmate advised him to file a federal habeas corpus petition in August 2018, which he filed on September 10, 2018. The Petitioner also filed an amended pro se petition for federal habeas corpus relief on October 19, 2018. The Petitioner admitted that the habeas corpus petition forms he completed included questions about post-conviction proceedings, but he stated that he did not know what post-conviction proceedings were and was focused on seeking habeas corpus relief. The Petitioner identified the September 27, 2021 order denying his federal habeas corpus petition without a hearing or the appointment of counsel. The Petitioner testified that he appealed the denial to the United States Court of Appeals for the Sixth Circuit, which denied both a certificate of appealability and his petition for en banc rehearing.

The Petitioner testified that he became depressed after his federal habeas corpus petition was denied, and in 2023, he contracted COVID-19, which “kept [him] down” for about two months. He stated that in “late” 2023 or “early” 2024, another inmate told him about post-conviction proceedings, so he started researching them. The Petitioner testified that he filed his pro se post-conviction petition in October 2024, and the post-conviction court appointed counsel. He testified that if appellate counsel had told him about his right to seek post-conviction relief, he would have filed a post-conviction petition in a timely

manner. On cross-examination, the Petitioner stated that he never spoke with his brother and codefendant, Leon Denton, about post-conviction proceedings.

At the conclusion of the proof, the parties argued their respective positions on the tolling issues. The post-conviction court denied post-conviction relief in an oral ruling on January 13, 2026, and entered a written order dismissing the petition on March 26, 2026. In its written order, the post-conviction court held that

the Petitioner has failed to establish circumstances that warrant a tolling of the statute of limitations. The proof presented does not establish that appellate counsel abandoned the Petitioner or prevented him from filing a timely petition. Appellate [c]ounsel represented the Petitioner during the direct appeal proceedings[,] and that representation concluded after the appellate process completed. Further, the [c]ourt finds that the Petitioner has failed to demonstrate the reasonable diligence standard as required in *Whitehead*. The record reflects that the Petitioner pursued other legal remedies following the conclusion of his direct appeal, including his filing of a federal [h]abeas [corpus] petition. The Petitioner's knowledge and ability to pursue other legal remedies during this one-year period undermines his assertion that circumstances beyond his control prevented him from filing a timely petition for post-conviction relief. The Petitioner's claim that he was "unaware" of the availability to file a post-conviction or unable to file until years later is insufficient to establish a basis for tolling. The [c]ourt finds that the [p]etition and [a]mended [p]etition were filed outside the one-year statute of limitation required by Tenn[essee] Code Ann[otated section] 40-30-102(a) and that the Petitioner has failed to establish that due process requires tolling of the statute of limitation.

The Petitioner filed a timely notice of appeal.

II. ANALYSIS

On appeal, the Petitioner argues that the post-conviction court erred by finding that he was not entitled to the tolling of the statute of limitations and by dismissing his petition. The Petitioner concedes that he filed an untimely petition for post-conviction relief, but he claims that 1) due process requires the tolling of the statute of limitations based on alleged attorney abandonment and 2) the statute of limitations should be tolled because he pursued federal habeas corpus relief before filing his post-conviction petition. The State responds that the post-conviction court properly dismissed the petition. 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). If it is apparent from the petition, any exhibits, and the record of the case that the petition was not filed within the limitations period, then the statute provides for summary dismissal by the post-conviction court. *Id.* § -106(b). As noted above, the Tennessee Supreme Court denied the Petitioner's application for permission to appeal pursuant to Tennessee Rule of Appellate Procedure 11 on December 8, 2017. Accordingly, the Petitioner had until Monday, December 10, 2018, to timely file a petition for post-conviction relief. Because the Petitioner did not file his post-conviction petition until October 31, 2024, it was nearly six years late.

"Time is of the essence" in filing a petition for post-conviction relief, and compliance with the one-year statute of limitations "is a condition upon [the] exercise" of the right to post-conviction relief. *Id.* § -102(a). Nevertheless, the Post-Conviction Procedure Act provides three statutory exceptions to the timely filing requirement, and the Tennessee Supreme Court has recognized that a petitioner's due process right may also require tolling the statute of limitations in certain circumstances. *Whitehead*, 402 S.W.3d at 623. A petitioner seeking due process tolling of the statute of limitations must prove both "that he or she has been pursuing his or her rights diligently" and "that some extraordinary circumstance stood in his or her way and prevented timely filing." *Bush v. State*, 428 S.W.3d 1, 22 (Tenn. 2014). The Tennessee Supreme Court has recognized the following as such extraordinary circumstances: "(1) claims arising after the statute of limitations has expired; (2) claims based on mental incompetence that prevented the petitioner from complying with the statute of limitations; and (3) claims based on attorney misconduct." *Lowe v. State*, 703 S.W.3d 319, 331 (Tenn. Crim. App. 2024) (citing *Whitehead*, 402 S.W.3d at 623-24). When a petitioner fails to provide sufficient facts to prove that one of these limited circumstances prevented the timely filing of his or her post-conviction petition, a claim for due process tolling must fail, and an untimely petition for post-conviction relief must be dismissed. *Lowe*, 703 S.W.3d at 331 (citing *Burford v. State*, 845 S.W.2d 204, 208 (Tenn. 1992)).

"Issues regarding whether due process required the tolling of the post-conviction statute of limitations are mixed questions of law and fact." *Whitehead*, 402 S.W.2d at 621 (citing *Smith v. State*, 357 S.W.3d 322, 355 (Tenn. 2011)). Under that standard of review, we review the post-conviction court's conclusions of law de novo, with no presumption of

correctness. *Lowe*, 703 S.W.3d at 331. However, we are bound by its findings of fact unless the record preponderates against them. *Id.*

A. ATTORNEY ABANDONMENT

The Petitioner first maintains that due process requires tolling the statute of limitations because appellate counsel failed to advise him of the denial of his Rule 11 application, his right to seek post-conviction relief, and the associated deadlines. The Petitioner admitted he was informed that his Rule 11 application was denied in early April 2018, at least eight months before the limitations period for filing a post-conviction petition ended. The record also indicates that the Petitioner was again informed that his Rule 11 application was denied via letter from appellate counsel in June 2018. The record therefore shows that the Petitioner was advised that his Rule 11 application was denied well before any statutory limitations period passed.

Appellate counsel could not recall whether she advised the Petitioner about his post-conviction rights. However, an attorney's failure to advise his or her client concerning their post-conviction rights does not support due process tolling. As this court has previously held, "even when based on an attorney's negligent failure to render legal advice[,] a petitioner's personal ignorance of post-conviction procedures is an insufficient basis for due process tolling." *Lowe*, 703 S.W.3d at 332 (quoting *State v. Phillips*, 904 S.W.2d 123, 124 (Tenn. Crim. App. 1995) (internal quotation marks omitted)); *see also Brown v. State*, No. W2024-00327-CCA-R3-PC, 2024 WL 3757225, at *3 (Tenn. Crim. App. Aug. 12, 2024) (collecting cases and holding that "[t]his court has routinely concluded that trial counsel's failure to advise a petitioner about the right to seek post-conviction relief does not justify equitable tolling"), *no perm. app. filed*. Accordingly, the Petitioner is not entitled to due process tolling based upon his claims of attorney abandonment.

B. FEDERAL HABEAS CORPUS PETITION

The Petitioner also maintains that he is entitled to tolling of the post-conviction statute of limitations during the period his federal habeas corpus petition was pending. The Petitioner claims that because he filed his federal habeas corpus petition in September 2018, within the statutory limitations period for filing for post-conviction relief, the limitations period for filing his post-conviction petition should be tolled. The State responds that Tennessee law does not permit the tolling of the post-conviction statute of limitations for federal litigation.

Tennessee Code Annotated section 40-30-102(a) states, in relevant part, that "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.” Tenn. Code Ann. § 40-30-102(a) (emphasis added). In addition, “[t]he statute of limitations *shall not be tolled for any reason*, including any tolling or saving provision otherwise available at law or equity.” *Id.* (emphasis added). The statute provides certain limited exceptions to the strict statute of limitations:

(b) No court shall have jurisdiction to consider a petition filed after the expiration of the limitations period unless:

(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. The 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 the 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 the 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.

(c) This part contemplates the filing of only one (1) petition for post-conviction relief. In no event may more than one (1) petition for post-conviction relief be filed attacking a single judgment. 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. A petitioner may move to reopen a post-conviction proceeding that has been concluded, under the limited circumstances set out in § 40-30-117.

Id. § -102(b), (c).

As the Petitioner notes, there is no Tennessee case law directly on point on this issue. *But see Monk v. State*, No. 03C01-9508-CC-00252, 1996 WL 77454, at *1 (Tenn. Crim. App. Feb. 20, 1996) (Order) (affirming, pursuant to Tennessee Court of Criminal

Appeals Rule 20, that the trial court properly determined that pending federal habeas corpus action did not toll the post-conviction statute of limitations), *perm. app. denied* (Tenn. July 1, 1996). However, an analysis of the tolling statute renders his claim unavailing. Among the basic canons of statutory construction is *expressio unius est exclusio alterius*—“the expression of one thing implies the exclusion of others”—or, more colloquially, the negative implication canon. *Richards v. Vanderbilt Univ. Med. Ctr.*, 706 S.W.3d 319, 324 (Tenn. 2025); *see also* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 107 (2012). This rule recognizes that “[o]missions are significant when statutes are express in certain categories but not others.” *Carver v. Citizen Utils. Co.*, 954 S.W.2d 34, 35 (Tenn. 1997).

As noted above, the General Assembly enacted a statute that clearly created a strict statute of limitations with few delineated exceptions. It has not, however, explicitly provided that the statute of limitations may be tolled by filing a federal habeas corpus petition before exhausting one’s state remedies. In the absence of any language creating such an exception to the Post-Conviction Procedure Act’s strict statute of limitations, the Petitioner’s claim must fail. *Cf. Lowe*, 703 S.W.3d at 330 (“Seeking a writ of certiorari from the United States Supreme Court does not toll the post-conviction statute of limitations.”) (citing *Whitehead*, 402 S.W.3d at 618). Accordingly, the post-conviction court appropriately dismissed his petition.

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