

No. 18-8844

**IN THE
SUPREME COURT OF THE UNITED STATES**

**FARRIS GENNER MORRIS,
Petitioner,**

V.

**TENNESSEE,
Respondent**

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**

APPENDIX TO RESPONDENT'S BRIEF IN OPPOSITION

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06/07/2018

Clerk of the
Appellate Courts

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

FARRIS MORRIS v. STATE OF TENNESSEE

Circuit Court for Madison County
No. C01-50

No. W2017-01700-SC-R11-PD

ORDER

Upon consideration of the application for permission to appeal of Farris Morris and the record before us, the application is denied.

PER CURIAM

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

FILED

02/01/2018

Clerk of the
Appellate Courts

FARRIS MORRIS v. STATE OF TENNESSEE

**Circuit Court for Madison County
No. C01-50**

No. W2017-01700-CCA-R28-PD

ORDER

This matter is before the Court on the Petitioner Farris Morris's application for permission to appeal the post-conviction court's denial of his motion to reopen his post-conviction petition. The State has responded in opposition to the motion.

The Petitioner was convicted of two counts of premeditated first degree murder and one count of aggravated rape. He was sentenced to death for one of the first degree murder convictions, life without parole for the other first degree murder conviction, and twenty-five years for the aggravated rape conviction. The Tennessee Supreme Court affirmed the Petitioner's convictions and sentence of death. *See State v. Morris*, 24 S.W.3d 788 (Tenn. 2000).

The Petitioner subsequently filed a petition for post-conviction relief. The post-conviction court denied relief, and this Court upheld the post-conviction court's judgment on appeal. *See Farris Genner Morris, Jr. v. State*, No. W2005-00426-CCA-R3-PD, 2006 WL 2872870 (Tenn. Crim. App. Oct. 10, 2006), *perm. app. denied* (Tenn. Feb. 26, 2007).

On June 23, 2016, the Petitioner filed a motion to reopen his post-conviction petition, relying upon the United States Supreme Court's opinions in *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015), and *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016), and Justice Breyer's dissenting opinion in *Glossip v. Gross*, 135 S.Ct. 2726 (2015). The post-conviction court denied the motion and this Court denied the application for permission to appeal. *Farris Genner Morris v. State of Tennessee*, No. W2016-01887-CCA-R28-PD (Tenn. Crim. App. Nov. 1, 2016).

On May 19, 2017, the Petitioner filed the present motion to reopen his post-conviction petition, relying upon the United States Supreme Court's opinion in *Foster v. Chatman*, 136 S. Ct. 1737 (2016). The post-conviction court entered an order denying the motion on July 31, 2017, and the present application for permission to appeal was timely filed with this Court.

The reopening of post convictions proceedings are governed by statute and limited to specific grounds and occurrences. Tennessee Code Annotated section 40-30-117(a) authorizes the reopening of post-conviction proceedings only under the following circumstances:

(1) The 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. The motion 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; or

(2) The claim in the motion 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 motion 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 motion must be filed within one (1) year of the finality of the ruling holding the previous conviction to be invalid; and

(4) It appears that the facts underlying the claim, if true, would establish by clear and convincing evidence that the petitioner is entitled to have the conviction set aside or the sentence reduced.

T.C.A. § 40-30-117(a). The decision whether to grant a motion to reopen is within the discretion of the post-conviction court. *Id.* at (c).

The Petitioner asserts that he is entitled to relief under Tennessee Code Annotated section 40-30-117(a)(1) in that the decision of the United States Supreme Court in *Foster* created a new constitutional right that would provide an avenue of relief. This Court must first assess whether the *Foster* decision created a new constitutional right that would afford any relief to the Petitioner. Tennessee Code Annotated section 40-30-122 addresses interpretation of a new rule of constitutional law stating in part:

“For purposes of this part, a new rule of constitutional criminal law is announced if the result is not dictated by precedent existing at the time the petitioner’s conviction became final and application of the rule was susceptible to debate among reasonable minds.”

Tenn. Code Ann. § 40-30-122. Further, the courts have determined that a “case announces a new rule when it breaks new ground or imposes a new obligation on the States or the Federal Government [or] . . . if the result was not dictated by precedent existing at the time the defendant’s conviction became final.” *Teague v. Lane*, 109 S.Ct. 1060, 1070 (1989) (citations omitted); *see also Van Tran v. State*, 66 S.W.3d 790, 810-11 (Tenn. 2001).

Upon review of the application of the Petitioner and the opinion of the United States Supreme Court, this Court cannot come to the conclusion that a newly created retroactively applicable constitutional right arose from the *Foster* decision. In *Foster*, the United States Supreme Court overruled and reversed a decision by the Georgia Supreme Court in regards to race based challenges on potential jurors. The decision by the United States Supreme Court did not state new law in its ruling but was rather an application of the prior decision in *Batson v. Kentucky*, 106 S.Ct. 1712 (1986). In its ruling, the United States Supreme Court prefaces its analysis by stating

“Our decision in *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69, provides a three-step process for determining when a strike is discriminatory:

“First, a defendant must make a prima facie showing that a peremptory challenge has been exercised on the basis of race; second, if that showing has been made, the prosecution must offer a race-neutral basis for striking the juror in question; and third, in light of the parties’ submissions, the trial court must determine whether the defendant has shown purposeful discrimination.” *Snyder*, 552 U.S., at 476–477, 128 S.Ct. 1203 (internal quotation marks and brackets omitted).

Both parties agree that *Foster* has demonstrated a prima facie case, and that the prosecutors have offered race-neutral reasons for their strikes. We therefore address only *Batson*’s third step.”

Foster at 1747. The language of the *Foster* opinion reveals that rather than creating new law, the ruling served only to apply the prior ruling of *Batson* to the facts of the *Foster* case.

Furthermore, in his application, the Petitioner states that a new constitutional right

was created that would entitle a new trial “if the prosecution struck an African-American or other minority juror and that strike was ‘motivated in substantial part by discriminatory intent.’ *Foster* 136 S.Ct. at 1754.” The Petitioner specifically cited a portion of the *Foster* decision to emphasize the new area of law created. However, the Petitioner failed to properly note that the quoted portion of the *Foster* opinion was a direct quote by the *Foster* court of the prior decision rendered in *Snyder v. Louisiana*, 128 S.Ct. 1203 (2008). As such, the decision in *Foster* did not create new law but applied prior decisions of the United States Supreme Court, including *Batson* and *Snyder* to the *Foster* case.

Because the Supreme Court’s decision in *Foster v. Chatman* did not announce a new constitutional rule requiring retrospective application, we conclude that the post-conviction court properly denied the appellant’s motion to reopen post-conviction proceedings. The petitioner’s application for permission to appeal is hereby DENIED. As it appears that the petitioner is indigent, the costs of this proceeding are taxed to the State of Tennessee.

PER CURIAM

JOHN EVERETT WILLIAMS, JUDGE
ALAN E. GLENN, JUDGE
CAMILLE R. MCMULLEN, JUDGE