

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT JACKSON

FILED

01/17/2019

Clerk of the  
Appellate Courts

**TYRONE CHALMERS v. STATE OF TENNESSEE**

**Criminal Court for Shelby County  
No. P24965**

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**No. W2018-01650-CCA-R28-PD**

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**ORDER**

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

In 1997, the Petitioner was convicted of first degree felony murder and especially aggravated robbery, and he was sentenced to death. The conviction and sentence were upheld by the Tennessee Supreme Court upon appeal. See State v. Chalmers, 28 S.W.3d 913 (Tenn. 2000). The United States Supreme Court denied certiorari on March 19, 2001. 532 U.S. 925 (2001).

Since his conviction, the Petitioner has filed multiple petitions for post-conviction relief from his conviction. On April 19, 2001, the Petitioner filed a pro se petition for post-conviction relief alleging ineffective assistance of counsel. That petition was later amended through a September 2003 filing raising the additional ground of intellectual disability. The trial court denied the petition for post-conviction relief, and the denial was upheld by the appellate courts. Tyrone Chalmers v. State, No. 2006-00424-CCA-R3-PD, 2008 WL 2521224 (Tenn. Crim. App. 2008), perm. app. denied (Tenn. Dec. 22, 2008). Petitioner filed a motion to reopen post-conviction proceedings on April 10, 2012, alleging that he was ineligible for the death penalty due to his intellectual disability under the ruling in Coleman v. State, 341 S.W.3d 221 (Tenn. 2011), and arguing that Coleman established a new constitutional right that was not available at the time of trial. In addition, the Petitioner argued that his petition should be reopened because of a new evaluation that should qualify as new scientific evidence that he was intellectually disabled. The petition was later amended to include a petition for writ of error coram nobis and the Petitioner invoked the intellectual disability provisions of Tennessee Code Annotated section 39-13-203. The petition and its amendments were denied by the trial court, which concluded that the grounds alleged by the Petitioner were precluded by

Keen v. State, 398 S.W.3d 594 (Tenn. 2012) and were filed untimely. The trial court's decision was upheld by the Tennessee Court of Criminal Appeals and the Tennessee Supreme Court. See Tyrone Chalmers v. State, W2013-02329-CCA-R28-PD (Tenn. Crim. App. 2014) (order), perm. app. denied (Tenn. Nov. 19, 2014). Finally, on May 26, 2015, the Petitioner filed a motion to reopen his post-conviction proceedings in the criminal court of Shelby County, Tennessee. The trial court denied the Petitioner's motion to reopen, and this Court denied his application for permission to appeal the trial court's denial.

On March 29, 2018, the Petitioner again filed a motion to reopen post-conviction proceedings in the trial court, claiming that he was entitled to relief based on the United States Supreme Court's ruling in Moore v. Texas, 137 S. Ct. 1039 (2017). The post-conviction court denied the motion to reopen, concluding that Moore did not create a new constitutional rule that applied retroactively. The Petitioner timely filed an application for permission to appeal in this Court pursuant to Tennessee Code Annotated section 40-30-117(c) and Tennessee Supreme Court Rule 28, § 10(B).

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.

Tenn. Code Ann. § 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).

As an initial matter, the State contends that the Petitioner's motion to reopen was untimely. The State avers that the motion was filed 366 days after the Moore opinion was decided, which was past the one-year statute of limitations prescribed in Tennessee Code Annotated 40-30-117(a)(1). The United States Supreme Court issued its opinion in Moore on March 28, 2017. Thus, the statute of limitations began to run on March 29, 2017. One year, or 365 days, from that date was March 28, 2018, and the motion to reopen was filed on March 29, 2018. Accordingly, we agree with the State that the motion to reopen was untimely. Notwithstanding this procedural defect, we conclude that the Petitioner's motion is also lacking in substantive merit and should be denied.

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 Moore created a new constitutional right that would provide an avenue of relief. In particular, he contends that Moore established the right not to be executed if a defendant is intellectually disabled under current medical standards. This Court must first assess whether the Moore 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.”

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).

In Moore, the Supreme Court held the analysis by the Texas Court of Criminal Appeals (“TCCA”) of the intellectual disability of the defendant was unconstitutional. Moore, at 1044. The TCCA utilized factors created in Ex Parte Jose Garcia Briseno, 135 S.W.3d 1 (Texas Crim. App. 2004), to determine if Moore was intellectually disabled. In its ruling, the Supreme Court did not establish a newly created constitutional right to be retroactively applied but rather based its decision upon an application of its prior rulings in Atkins v. Virginia, 122 S. Ct. 2242 (2002), and Hall v. Florida, 134 S. Ct. 1986 (2014). The Supreme Court found error in the TCCA's use of its own self-created factors to determine the intellectual disability of the defendant rather than “the generally accepted, uncontroversial intellectual-disability diagnostic definition.” Moore, at 1045. The Supreme Court stated that the TCCA's “conclusion that Moore's IQ scores established

that he is not intellectually disabled is irreconcilable with Hall. Hall instructs that, where an IQ score is close to, but above 70, courts must account for the test's 'standard error of measurement.'" Id. at 1049 (citing Hall v. Florida, 134 S. Ct. at 1995, 2001).

Moore is clearly derivative of Atkins and Hall and applied the standards created in the prior cases to the specific proceedings of the TCCA, abrogating the prior TCCA ruling in Briseno. The Supreme Court stated

"By design and in operation, the Briseno factors "creat[e] an unacceptable risk that persons with intellectual disability will be executed," Hall, 572 U.S. at —, 134 S. Ct. at 1990. After observing that persons with "mild" intellectual disability might be treated differently under clinical standards than under Texas' capital system, the CCA defined its objective as identifying the "consensus of Texas citizens " on who "should be exempted from the death penalty." Briseno, 135 S.W.3d at 6 (emphasis added). Mild levels of intellectual disability, although they may fall outside Texas citizens' consensus, nevertheless remain intellectual disabilities, see Hall, 572 U.S., at — — —, 134 S. Ct. at 1998-99; Atkins, 536 U.S. at 308, and n.3, 122 S. Ct. 2242; AAIDD-11 at 153, and States may not execute anyone in "the entire category of [intellectually disabled] offenders," Roper, 543 U.S. at 563-564, 125 S. Ct. 1183 (emphasis added); see supra, at 1048."

Moore at 1051. As with the prior Supreme Court ruling in Hall, the Moore decision did not enlarge the class of individuals affected by the Supreme Court ruling in Atkins but directed the application of the principles established in Atkins. Therefore, it follows that the Supreme Court's decision in Moore did not announce a new constitutional rule requiring retrospective application to permit reopening of the post-conviction petition in the Petitioner's case. Moore does not create a right under which the Petitioner may be granted relief as any proceeding would be predicated upon the exercise of the right established in Atkins.

The Petitioner has failed to satisfy any of the grounds for reopening a post-conviction petition. Accordingly, the post-conviction court did not abuse its discretion in denying the motion to reopen. See Tenn. Code Ann. § 40-30-117(c).

IT IS HEREBY ORDERED that the Petitioner's application for permission to appeal is DENIED. Because it appears that the Petitioner is indigent, costs are taxed to the State.

CAMILLE R. McMULLEN, JUDGE  
JOHN EVERETT WILLIAMS, PRESIDING JUDGE  
ALAN E. GLENN, JUDGE