

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

FILED
03/01/2024
Clerk of the
Appellate Courts

ANDRE TERRY v. STATE OF TENNESSEE

**Criminal Court for Knox County
No. 120605**

No. E2023-00684-CCA-R3-PC

ORDER

This case is an appeal from the Knox County Criminal Court’s denial of post-conviction relief. Petitioner, Andre Terry, was convicted of several crimes in 2017. This Court affirmed Petitioner’s convictions on direct appeal and our supreme court denied review. *State v. Terry*, No. E2019-01741-CCA-R3-CD, 2021 WL 3485935 (Tenn. Crim. App. Aug. 9, 2021), *perm. app. denied* (Tenn. Nov. 17, 2021).

As we began our foray into the record in this case, we discovered that Petitioner’s pro se petition for post-conviction relief was not signed and verified under oath as required by Tennessee Code Annotated section 40-30-104(d) and did not contain any factual allegations to support his claims as required by section (e) of the same statute. The pro se petition was timely filed on February 4, 2022. The post-conviction court entered a preliminary order in which it appointed counsel on February 15, 2022. The preliminary order did not address the petition’s lack of signature and verification and factual allegations. The State filed a motion on May 24, 2022 to dismiss the petition in part because it was neither signed and verified nor contained any factual allegations. Petitioner did not file a response to the State’s motion or address these issues in any other manner. Petitioner filed an amended post-conviction petition through counsel on December 5, 2022. The amended petition was signed and verified by Petitioner and contained factual allegations. The parties only briefly addressed the issue at the post-conviction hearing, merely saying that “the issue has been resolved.”

We note that the amended petition, filed December 5, 2022, was filed after the limitations period had expired. *See* T.C.A. § 40-30-102(a) (“[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 . . . or consideration of the petition shall be barred.”). After the

limitations period expires, of course, “no court shall have jurisdiction to consider a petition” except in certain circumstances not applicable here. *Id.* § 40-30-102(b).

This Court held in *Vaughn v. State*, No. W2021-00354-CCA-R3-PC, 2022 WL 1618435, at *7 (Tenn. Crim. App. May 23, 2022), that an unsigned, unverified petition for post-conviction relief was a “nullity” and that the post-conviction court did not have jurisdiction to consider an amended petition that was signed and verified but filed outside the limitations period.

We find that it would be helpful to our resolution of this case for the parties to file supplemental briefs on the following issues:

- (1) Was Petitioner’s pro se post-conviction petition a nullity because it was neither signed and verified under oath by Petitioner nor contained any factual allegations?
- (2) If the pro se petition was not a nullity, did the amended petition cure any defect in Petitioner’s compliance with the statutory requirements for post-conviction petitions?
- (3) If the pro se petition was a nullity and the amended petition did not cure its defects, did the post-conviction court have jurisdiction to consider the petition?

Petitioner shall have twenty days to file his supplemental brief. The State shall then have twenty days to respond. Petitioner shall have ten days thereafter to file a reply brief, should he so choose. Upon completion of the supplemental briefing, the Court will issue its opinion in due course.

PER CURIAM