

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs June 21, 2023

FILED

08/03/2023

Clerk of the
Appellate Courts

ROOSEVELT MORRIS v. JASON CLENDENION, WARDEN

Appeal from the Circuit Court for Hickman County
No. 21-CV-43 Michael E. Spitzer, Judge

No. M2022-00857-CCA-R3-HC

Petitioner, Roosevelt Morris, appeals from the Hickman County Circuit Court's summary dismissal of his petition for writ of habeas corpus. Petitioner alleges he is entitled to relief because his sentence is unconstitutional under *Blakely v. Washington*, 542 U.S. 296 (2004), he did not receive timely pretrial notice of the State's notice of intent to seek enhanced punishment, and because the habeas corpus court did not give him sufficient time to file a written reply to the State's response to the habeas corpus petition. After review, we affirm the judgment of the habeas corpus court.

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

MATTHEW J. WILSON, J., delivered the opinion of the court, in which CAMILLE R. MCMULLEN, P.J. and KYLE A. HIXSON., J., joined.

Roosevelt Morris, Only, Tennessee, Pro Se.

Jonathan Skrmetti, Attorney General and Reporter; Benjamin A. Ball, Senior Assistant Attorney General; and Kayleigh Butterfield, Assistant Attorney General, for the appellee, State of Tennessee.

OPINION

I. Background

In 2004, a Shelby County jury found Petitioner guilty of two counts of attempted first degree murder, a Class A felony. The trial court sentenced Petitioner to two consecutive terms of twenty-five years as a Range I, standard offender, for an effective term of fifty years. On direct appeal, this court affirmed Petitioner's convictions but modified his sentence to forty-seven years. *See State v. Roosevelt Morris*, No. W2004-02277-CCA-MR3-CD, 2005 WL 6235723 (Tenn. Crim. App. Sept. 7, 2005). Among the

issues Petitioner raised in his direct appeal was that the trial court erred in enhancing his individual sentences based on the improper application of enhancement factors. *Id.* at *8. Petitioner cited to the United States Supreme Court’s opinion in *Blakely v. Washington*, 542 U.S. 296 (2004), in raising this claim. *Id.* However, citing to the then-current precedent of *State v. Gomez*, 163 S.W.3d 632 (Tenn. 2005) (*Gomez I*), this court rejected Petitioner’s *Blakely* claim. *State v. Roosevelt Morris*, 2005 WL 6235723, at *8.

Petitioner subsequently filed a timely post-conviction petition, which the post-conviction court denied. On appeal, in addition to arguing he received the ineffective assistance of counsel, he argued he was entitled to relief on his *Blakely* issue based on *Gomez I*’s reversal. *Roosevelt Morris v. State*, No. W2008-01449-CCA-R3-PC, 2010 WL 3970371, at *22 (Tenn. Crim. App. Oct. 11, 2010) (citing *State v. Gomez*, 239 S.W.3d 733, 740 (Tenn. 2007) (*Gomez II*)). This court concluded Petitioner’s ineffective assistance of counsel claims were without merit and that his *Blakely* claim could not be addressed retroactively. *See Roosevelt Morris v. State*, 2010 WL 3970371, at *22-23. Therefore, this court affirmed the post-conviction court’s order denying the petition.

Petitioner then filed a petition under 28 U.S.C. § 2254 for writ of habeas corpus in federal court. The federal district court concluded any *Blakely* error was harmless, and denied his petition, and the Sixth Circuit Court of Appeals affirmed the district court’s ruling.¹ *Roosevelt V. Morris v. David Mills, Warden*, No. 14-5869 (6th Cir. Aug. 6, 2015) (order affirming district court’s judgment).

II. Current Petition

On December 10, 2021, Petitioner filed a pro se petition for writ of habeas corpus in state court. He again raised his *Blakely* claim, asserting his judgments were void because “[t]he trial court acted without the mandated subject matter jurisdiction” in enhancing his sentences under this state’s former sentencing scheme, and he also argued his convictions were void based on the State’s improper notice of enhanced punishment. On April 27, 2022, the State, through the Attorney General, filed a motion to dismiss the habeas corpus petition, arguing the Petitioner’s stated issues did not entitle him to habeas corpus relief because the issues would at best render his judgments voidable, not void.

The habeas corpus court filed an order dismissing the petition on May 26, 2022. This timely appeal followed.

¹ We note that the style of Petitioner’s case in the order of the United States District Court was *Roosevelt Morris v. Tony Parker*, Case No. 11-2331-STA-cgc, 2014 WL 2956422 (W.D. Tenn. June 30, 2014); however, the style of the case at the Sixth Circuit was *Roosevelt V. Morris v. David Mills, Warden*, No. 14-5869 (6th Cir. Aug. 6, 2015). We assume another warden had been substituted as a Respondent in the case.

III. Analysis

On appeal, Petitioner restates his two issues from the court below, and he also argues the habeas corpus court “abused its judicial discretion when it dismissed Appellant’s writ without allowing him his right and expressed desire to enter a counter response to the State’s reply, in direct contravention to statutory law.” The State contends the habeas corpus court properly dismissed the petition without a hearing.² We agree with the State.

“The determination of whether habeas corpus relief should be granted is a question of law.” *Faulkner v. State*, 226 S.W.3d 358, 361 (Tenn. 2007) (citing *Hart v. State*, 21 S.W.3d 901, 903 (Tenn. 2000)). “Therefore, our standard of review is de novo with no presumption of correctness[.]” *Id.* (citing *Killingsworth v. Ted Russell Ford, Inc.*, 205 S.W.3d 406, 408 (Tenn. 2006)). The habeas petitioner bears the burden “to show by a preponderance of the evidence that the sentence is void or that the confinement is illegal.” *Wyatt v. State*, 24 S.W.3d 319, 322 (Tenn. 1998). The trial court may dismiss a habeas corpus petition without a hearing if the petition fails to establish the challenged judgment is void. Tenn. Code Ann. § 29-21-109; *Hickman v. State*, 153 S.W.3d 16, 20 (Tenn. 2004).

The right to seek habeas corpus relief is guaranteed by Article I, section 15 of the Tennessee Constitution, but the ability to seek habeas corpus relief is regulated by statute. *See* Tenn. Code Ann. § 29-21-101. The Tennessee Supreme Court has observed,

The grounds upon which habeas corpus relief is warranted are narrow. The writ will issue only when it appears on the face of the judgment or the record of the proceedings upon which the judgment is rendered that a court lacked jurisdiction or authority to sentence a defendant or that the sentence has expired. *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993). A habeas corpus petition may be used to challenge judgments that are void and not merely voidable. *Id.*; *Taylor v. State*, 995 S.W.2d 78, 83 (Tenn. 1999).

Stephenson v. Carlton, 28 S.W.3d 910, 911 (Tenn. 2000).

“An illegal sentence, one whose imposition directly contravenes a statute, is considered void and may be set aside at any time.” *May v. Carlton*, 245 S.W.3d 340, 344 (Tenn. 2008) (citing *State v. Burkhart*, 566 S.W.2d 871, 873 (Tenn. 1978)). Conversely, a voidable judgment or sentence “is one which is facially valid and requires the introduction

² After the State filed its motion to dismiss in the habeas corpus court, Petitioner filed a document styled “Counter Reply in Response to State’s Reply.” Petitioner asserts he presented the document to the prison mail room on May 20, 2022. However, the document was not filed with the Circuit Court Clerk until May 27, 2022—the day after the order dismissing the petition was filed.

of proof beyond the face of the record or judgment to establish its invalidity.” *Taylor*, 995 S.W.2d at 83 (citations omitted); *see Summers v. State*, 212 S.W.3d 251, 256 (Tenn. 2007).

Petitioner’s habeas corpus claims do not entitle him to relief. This court has long held that “a *Blakely* violation renders a conviction merely voidable rather than void, and the claim is not cognizable for purposes of habeas relief.” *McClenton v. State*, No. W2021-01054-CCA-R3-HC, 2022 WL 3153982, at *4 (Tenn. Crim. App. Aug. 8, 2022) (citing *Curry v. Carlton, Warden*, No. E2011-00607-CCA-R3-HC, 2011 WL 4600621, at *5 (Tenn. Crim. App. Oct. 6, 2011)), *no perm. app. filed*.

Additionally, this court has concluded that “the State’s failure to provide a notice of enhanced punishment would likewise render the judgment voidable, not void, and would not afford the petitioner habeas corpus relief.” *Kratochvil v. Holloway, Warden*, No. M2014-00600-CCA-R3-HC, 2014 WL 5428836, at *2 (Tenn. Crim. App. Oct. 27, 2014) (citing *Douglas v. Easterling, Warden*, No. W2010-00382-CCA-R3-HC, 2010 WL 5549052, at *2 (Tenn. Crim. App. Dec. 29, 2010)). Finally, as stated above, a habeas corpus court may dismiss a petition without a hearing if the petition fails to establish a petitioner is entitled to relief, so the trial court’s actions in this case were proper. Even if the court below had considered Petitioner’s reply, the filing would not have entitled Petitioner to relief. Petitioner’s assertions are all without merit.

IV. Conclusion

For the reasons stated above, we affirm the judgment of the habeas corpus court dismissing the petition for habeas corpus relief.

MATTHEW J. WILSON, JUDGE