



Tennessee Supreme Court  
**DISCRETIONARY APPEALS**  
Grants & Denials List  
June 24, 2019 - June 28, 2019

**GRANTS**

<b>Style/Appeal Number</b>	<b>County/Trial Judge/ Trial Court No.</b>	<b>Intermediate Court</b>	<b>Supreme Court Action</b>
<b><u>Nashville</u></b>			
STEVEN ANDERSON v. RUSSELL WASHBURN, WARDEN M2018-00661-SC-R11-HC	Trousdale County Circuit Court John D. Wootten, Jr. 2018-CV-4687	Witt Jr., James Curwood: Reverse Williams, John Everett: Dissent	Granted/Remanded: Application of State of Tennessee  Order filed 6-27-19 (See attached order)
<b><u>Jackson</u></b>			
ANTONIO HOWARD v. STATE OF TENNESSEE W2018-00786-SC-R11-PC	Shelby County Criminal Court James M. Lammey 12-02872	Thomas Jr., D. Kelly: Reverse	Granted: Application of State of Tennessee  Order filed 6-24-19 (See attached order)

**DENIALS**

<b>Style/Appeal Number</b>	<b>County/Trial Judge/ Trial Court No.</b>	<b>Intermediate Court</b>	<b>Supreme Court Action</b>
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**Jackson**

STATE OF TENNESSEE v. TORAN HARPER  
W2017-00875-SC-R11-CD

Shelby County Criminal Court  
Lee V. Coffee  
15-04996

Ogle, Norma McGee: Affirm

Denied: Application of Toran  
Harper

Order filed 6-24-19

CARMEL BORUM v. STATE OF TENNESSEE  
W2018-00161-SC-R11-PC

Shelby County Criminal Court  
W. Mark Ward  
13-03285

McMullen, Camille R.: Affirm

Denied: Application of Carmel  
Borum

Order filed 6-24-19

STATE OF TENNESSEE v. ROBERT ANTWAN  
MCELMURRY  
W2018-00360-SC-R11-CD

Dyer County Circuit Court  
R. Lee Moore, Jr.  
14-CR-106

Glenn, Alan E.: Affirm

Denied: Application of Robert  
Antwan McElmurry

Order filed 6-24-19

STATE OF TENNESSEE v. NEHEMIAH RIMMER  
W2018-00496-SC-R11-CD

Shelby County Criminal Court  
John Wheeler Campbell  
15-05452

Ogle, Norma McGee: Affirm

Denied: Application of Nehemiah  
Rimmer

Order filed 6-24-19

KEITH LEMONT FARMER v. SHAWN PHILLIPS,  
WARDEN  
W2018-01687-SC-R11-HC

Lake County Circuit Court  
R. Lee Moore, Jr.  
18-CR-10520

Montgomery Jr., Robert H.: Affirm

Denied: Application of Keith  
Lemont Farmer

Order filed 6-24-19

BRENDA K. MURRELL v. CRUMP MARKET  
W2018-02092-SC-R11-CV

Shelby County Circuit Court  
Mary L. Wagner  
CT-001629-18

Per Curiam: Case Dispositional  
Decision

Denied: Application of Brenda K.  
Murrell

Order filed 6-24-19

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

FILED

06/27/2019

Clerk of the  
Appellate Courts

**STEVEN ANDERSON v. RUSSELL WASHBURN, WARDEN**

**Circuit Court for Trousdale County  
No. 2018-CV-4687**

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**No. M2018-00661-SC-R11-HC**

**For Publication**

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**ORDER**

This matter came before the Court upon the application for permission to appeal of the State of Tennessee. In 1994, Steven Anderson pleaded guilty to second-degree murder, especially aggravated robbery, and aggravated robbery, for which he received an effective fifty-year sentence. On February 12, 2018, Mr. Anderson, proceeding pro se, filed in the Trousdale County Circuit Court his fourth petition for writ of habeas corpus. The petition asserted that, in sentencing him, the trial court failed to award Mr. Anderson pretrial jail credit for thirteen days of detention at a juvenile center prior to his transfer to the Shelby County Criminal Court.

On March 19, 2018, the habeas corpus court determined that Mr. Anderson's claims lacked merit and had been previously determined; consequently, it denied the petition. Mr. Anderson filed a timely notice of appeal.

On appeal, the Court of Criminal Appeals, in a divided opinion, analyzed this Court's decision in State v. Brown, 479 S.W.3d 200, 212-13 (Tenn. 2015). The majority found that Brown did not say "that an erroneous denial of pretrial jail credit would not be cognizable in habeas corpus." Anderson v. Washburn, No. M2018-00661-CCA-R3-HC, 2019 WL 453957, at \*5 (Tenn. Crim. App. Feb. 5, 2019). It concluded that "a properly-filed petition for writ of habeas corpus remains a viable avenue for relief on a claim that the trial court failed to award pretrial jail credit," and went on to award Mr. Anderson habeas corpus relief. Id. at \*7. On this basis, the Court of Criminal Appeals reversed and vacated the order of the habeas corpus court and remanded the case to the habeas corpus court to "transfer the case to the trial court for the entry of amended judgments to reflect pretrial jail credit for the time between December 10 and December 23, 1992." Id.

In Anderson, Judge Williams filed a dissenting opinion, based on his interpretation of this Court’s decision in Brown. The dissent stated in part: “I read Brown to hold that any failure to award pretrial jail credits on a judgment that was the result of inaccurate computation should be corrected as a clerical mistake under Tennessee Rule of Criminal Procedure 36.” Id. at \*8.

We agree with the Anderson dissent. In Brown, this Court sought to provide clarity to lower courts by stating that “a trial court’s failure to award pretrial jail credits does not render the *sentence* illegal and is insufficient, therefore, to establish a colorable claim for relief under Rule 36.1.” Brown, 479 S.W.3d at 213 (emphasis in original); see also State v. Wooden, 478 S.W.3d 585, 594-595 (Tenn. 2015) (“[W]e conclude that the definition of ‘illegal sentence’ in Rule 36.1 is coextensive with, and not broader than, the definition of the term in the habeas corpus context.”). Respectfully, if the failure to award pretrial jail credits does not render the *sentence* illegal, such a failure would not render the judgment otherwise illegal. See Cantrell v. Easterling, 346 S.W.3d 445, 456 (Tenn. 2011) (“[A] judgment in a criminal case includes *both* a conviction *and* a sentence. This Court has previously recognized that the adjudication of guilt—that is, the conviction—and the sentence are distinct and severable components of the judgment.” (emphasis in original)). Thus, a claim based on a trial court’s failure to award pretrial jail credits is not cognizable in the context of a petition for habeas corpus relief. Rather, the appropriate avenue for relief would be to seek correction of a clerical mistake pursuant to Tennessee Rule of Criminal Procedure 36.

Accordingly, the State’s application for permission to appeal is hereby granted, the judgment of the Court of Criminal Appeals is reversed, and the judgment of the habeas corpus court is reinstated. We remand the case to the habeas corpus court with directions to transfer the matter to the trial court, in order for the trial court to address any failure to award pretrial jail credit as a clerical mistake under Tennessee Rule of Criminal Procedure 36.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE  
AT JACKSON

**FILED**

06/24/2019

Clerk of the  
Appellate Courts

**ANTONIO HOWARD v. STATE OF TENNESSEE**

**Criminal Court for Shelby County  
No. 12-02872**

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**No. W2018-00786-SC-R11-PC**

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**ORDER**

Upon consideration of the application for permission to appeal of the State of Tennessee and the record before us, the application is granted.

The Clerk is directed to place this matter on the docket for oral argument upon the completion of briefing.

PER CURIAM