

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs July 16, 2019

FILED

02/26/2020

Clerk of the
Appellate Courts

JEFFERY YATES v. GRADY PERRY, WARDEN ET AL.

**Appeal from the Circuit Court for Wayne County
Nos. 16403, 02-00754 Robert L. Jones, Judge**

No. M2018-02143-CCA-R3-HC

Petitioner, Jeffery Yates, appeals from the summary dismissal of his latest petition for habeas corpus relief challenging the judgment for his 2003 aggravated robbery conviction. Petitioner claims that an amended judgment entered by the trial court which ordered the sentence to run consecutively to his prior sentences is void. The habeas corpus court found that the amended judgment was not void and that Petitioner had failed to state a cognizable claim for habeas corpus relief. Discerning no error, we affirm.

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

THOMAS T. WOODALL, J., delivered the opinion of the court, in which NORMA MCGEE OGLE and ALAN E. GLENN, JJ., joined.

Jeffery Yates, Clifton, Tennessee, *Pro Se*.

Herbert H. Slatery III, Attorney General and Reporter; M. Todd Ridley, Assistant Attorney General; and Brent A. Cooper, District Attorney General, for the appellee, State of Tennessee.

OPINION

Procedural history

In 2003, Petitioner was convicted by a Shelby County jury of aggravated robbery. *State v. Jeffery Yates*, No. W2003-02422-CCA-R3-CD, 2005 WL 1707974 (Tenn. Crim. App. July 21, 2005), *perm. app. denied* (Tenn. Dec. 19, 2005). He was sentenced to serve 30 years at 60 percent as a Range III career offender. *Id.* at *1. His offender classification was based, in part, on his convictions in 1993 and 1994. In 1993, Petitioner was convicted of especially aggravated kidnapping, attempted aggravated robbery, and

aggravated kidnapping, for which Petitioner received an effective 18-year sentence. [*Jeffery*] *D. Yates v. State*, No. 02C01-9608-CR-00276, 1997 WL 399311, at *1 (Tenn. Crim. App. July 16, 1997), *perm. app. denied* (Tenn. Feb. 23, 1998). In 1994, Petitioner pleaded guilty to five counts of aggravated assault and two counts of possession of cocaine with intent to sell and received an effective 10-year sentence that was ordered to run concurrently to the sentences for his 1993 convictions. *Jeffery Yates v. State*, No. W2007-02868-CCA-R3-HC, 2008 WL 3983111, at *1 (Tenn. Crim. App. Aug. 27, 2008) (memorandum opinion), *perm. app. denied* (Tenn. Jan. 20, 2009).

Petitioner has since raised numerous challenges to his convictions and sentences. See *Jeffery Yates v. State*, No. W2014-00325-CCA-R3-CO, 2015 WL 128097, at *1-2 (Tenn. Crim. App. Jan. 8, 2015), *perm. app. denied* (Tenn. May 15, 2015). Petitioner has been denied relief in each instance.

Petitioner filed a timely petition for post-conviction relief alleging, among numerous other issues, that his trial counsel was ineffective for failing “to notify the trial court that [his] prior convictions were void and could not be considered for sentencing purposes.” *Jeffery Yates v. State*, No. W2008-02498-CCA-R3-PC, 2009 WL 2985949, at *5 (Tenn. Crim. App. Sept. 18, 2009), *perm. app. denied* (Tenn. Feb. 22, 2010). The post-conviction court rejected Petitioner’s claim, and a panel of this court affirmed that decision on appeal. *Id.* at *12.

Petitioner filed a petition for writ of habeas corpus arguing that the convictions the sentencing court used to classify him as a career offender were void; therefore, his 30-year sentence as a Range III, career offender was an illegal sentence. *Yates*, 2008 WL 3983111, at *1. The habeas corpus court summarily denied the petition, and a panel of this court affirmed the decision on appeal. *Id.*

Petitioner filed a second petition for writ of habeas corpus alleging that his 2003 sentence was illegal because “the trial court relied on an invalid prior conviction to classify him as a Range III, career offender.” *Yates v. Parker*, 371 S.W.3d 152, 154 (Tenn. Crim. App. 2012). The habeas corpus court summarily dismissed the petition. This court affirmed the summary dismissal, holding that Petitioner had failed to “state which of the prior convictions . . . was invalid or the basis of the invalidity.” *Id.* at 156. The opinion further stated that an error in a defendant’s offender classification was not a cognizable claim for habeas corpus relief because such an error generally did not render a sentence illegal. *Id.*

Petitioner also filed two petitions for writ of habeas corpus directly challenging the concurrent service of his 1993 and 1994 convictions. Both petitions were summarily dismissed. In affirming the summary dismissal of the first petition, a panel of this court

held that Petitioner had “failed to attach any other documents [beyond the judgments of conviction] to his petition which show that he was on bail for the prior six offenses when he committed the latter three offenses.” *Jeffery Yates v. State*, No. W2006-00969-CCA-R3-HC, 2007 WL 936117, at *2 (Tenn. Crim. App. Mar. 29, 2007), *perm. app. denied* (Tenn. Aug. 13, 2007). Summary dismissal of the second petition was affirmed because Petitioner was not presently restrained of his liberty for the challenged judgments and because the issue had been previously determined. *Jeffery Yates v. State*, No. W2009-01136-CCA-R3-HC, 2010 WL 4540063, at *3 (Tenn. Crim. App. Sept. 24, 2010), *perm. app. denied* (Tenn. Dec. 22, 2010).

In 2013, Petitioner filed a motion to correct an illegal sentence pursuant to Tennessee Rule of Criminal Procedure 36.1. Petitioner again argued that his 1993 and 1994 convictions were void because his sentences for those convictions were not ordered to be served consecutively; therefore, Petitioner argued, his 2003 sentence for aggravated robbery was illegal because the sentencing court had relied on the 1993 and 1994 convictions in classifying Petitioner as a career offender. A panel of this court affirmed the summary denial of Petitioner’s motion on appeal, concluding that an error in a defendant’s sentencing classification does not render a sentence illegal. *Yates*, 2015 WL 128097, at *3-4 (citing *Cantrell v. Easterling*, 346 S.W.3d 445, 458 (Tenn. 2011)).

In 2016, Petitioner filed yet another petition for writ of habeas corpus relief, alleging that the 2003 judgment was void because it did not indicate whether his 30-year sentence was to be served concurrently or consecutively to his 18-year sentence, for which he was on parole at the time of the new offense. [*Jeffery*] *Yates v. Randy Lee, Warden*, No. E2017-00201-CCA-R3-HC, 2017 WL 2829821 (Tenn. Crim. App. June 30, 2017) (memorandum opinion), *perm. app. denied* (Tenn. Sept. 20, 2017). Because Rule 32(c)(3) of the Tennessee Rules of Criminal Procedure requires consecutive service of a sentence imposed “for a felony committed while on parole for a felony,” a panel of this court held that Petitioner was not entitled to habeas corpus relief based on the absence of an explicit order of consecutive sentencing. *Id.*; Tenn. R. Crim. P. 32(c)(3)(A) (stating that “the sentence shall be consecutive whether the judgment explicitly so orders or not.”); *see also Hogan v. Mills*, 168 S.W.3d 753, 756 (Tenn. 2005).

In 2017, Petitioner filed yet another motion to correct an illegal sentence pursuant to Tennessee Rule of Criminal Procedure 36.1. *State v. Jeffery Yates*, No. W2018-00284-CCA-R3-CD, 2019 WL 192397 (Tenn. Crim. App. Jan. 11, 2019), *perm. app. denied* (Tenn. Apr. 15, 2019). Petitioner complained that the 2003 judgment form was incomplete because it did not indicate whether his 30-year sentence for aggravated robbery was concurrent or consecutive to his prior 18-year sentence for especially aggravated kidnapping. In response to the motion, the trial court entered a corrected judgment, stating that Petitioner’s sentence was consecutive to “all other sentences [for]

which he was on parole on 8/26/01.” *Id.* Petitioner appealed, arguing that the amended judgment was void. *Id.* A panel of this court affirmed the entry of the amended judgment. The panel noted that Petitioner’s argument, that the amended judgment was void because the trial court lacked jurisdiction to amend it, was “stupefying because Petitioner himself is the one that asked the trial court to correct the judgment.” *Id.* at *3.

While the appeal in that case was pending, Petitioner filed the petition for writ of habeas corpus relief that is the subject of this appeal. Petitioner alleged that the amended judgment entered in February, 2018 was void because the trial court lacked jurisdiction to enter the amended judgment. The habeas corpus court summarily dismissed the petition, finding that the trial court “had jurisdiction to amend the judgment, and that the amendment did not make the judgment void.” The habeas corpus court concluded that the petition failed to state a cognizable claim for relief. Petitioner appeals.

Analysis

Initially, we note that the claim made by Petitioner in the instant petition is essentially the same claim raised by Petitioner in his previous Rule 36.1 motion. *See Yates*, 2019 WL 192397, at *3. Thus, principles of res judicata could be invoked to prevent Petitioner from raising these claims again in this proceeding. *See Antonio L. Sweatt v. State*, No. M1999-01300-CCA-R3-PC, 2000 WL 255328 at *1 (Tenn. Crim. App. Mar. 6, 2000), *perm. app. denied* (Tenn. Oct. 16, 2000). Notwithstanding, we will address the merits of Petitioner’s argument in the hope that doing so will forestall future habeas corpus petitions which raise these issues again.

The determination of whether to grant habeas corpus relief is a question of law. As such, we will review the habeas corpus court’s findings de novo without a presumption of correctness. Moreover, it is the petitioner’s burden to demonstrate, 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. 2000).

Article I, section 15 of the Tennessee Constitution guarantees an accused the right to seek habeas corpus relief. *See Taylor v. State*, 995 S.W.2d 78, 83 (Tenn. 1999). It is well-established in Tennessee that habeas corpus relief is available only when a judgment is void. A judgment is void “only when it appears on the face of the judgment or the record of the proceedings upon which the judgment is rendered that a convicting court was without jurisdiction or authority to sentence a defendant, or that a defendant’s sentence of imprisonment or other restraint has expired.” *State v. Ritchie*, 20 S.W.3d 624, 630 (Tenn. 2000) (citations omitted). A void or illegal sentence is one whose imposition directly contravenes a statute. *Stephenson v. Carlton*, 28 S.W.3d 910, 911 (Tenn. 2000).

Petitioner's argument in this appeal fails for the same reason his argument failed in his most recent appeal from the denial of his Rule 36.1 motion. In this appeal, Petitioner again contends that the same amended judgment is void. Petitioner claims in his petition that the judgment is void because the trial court lacked jurisdiction to clarify that the sentence was required to be served consecutively to sentences for which he was on parole at the time he committed the offense. Petitioner argues that the original trial judge who imposed the 30-year sentence never stated on the record that the sentence was to be served consecutively. In Petitioner's case, that assertion, even if correct, is irrelevant. Tennessee Rule of Criminal Procedure 32(c)(3) mandates that a sentence "shall be consecutive whether the judgment explicitly so orders or not." Tenn. R. Crim. P. 32(c)(3). A panel of this court has already rejected this same argument:

Petitioner's first argument – that the trial court's amended judgment is void because the original judgment was final and, therefore, the trial court lost jurisdiction to amend it – is stupefying because Petitioner himself is the one that asked the trial court to correct the judgment. Petitioner's motion quoted the text of Rule 36, which clearly gives the trial court the jurisdiction to correct a clerical error at any time. Petitioner cannot now complain that the trial court gave him the very remedy he sought.

Yates, 2019 WL 192397, at *3 (citations omitted).

The Tennessee Supreme Court has held that the definition of "illegal sentence" in Rule 36.1 is coextensive with, and actually mirrors, the definition our supreme court has applied to the term for purposes of habeas corpus proceedings. *State v. Wooden*, 478 S.W.3d 585, 594-95 (Tenn. 2015) (citations omitted). A panel of this court has already determined that the amended judgment Petitioner challenges was not illegal and that the trial court was not without jurisdiction to enter the amended judgment. *Yates*, 2019 WL 192397, at *3-4. A panel of this court had previously held that silence in the original 2003 judgment regarding the alignment of Petitioner's sentences did not render the judgment illegal because Tennessee Rule of Criminal Procedure 32(c)(3) requires that a sentence imposed for an offense committed while on parole runs consecutively to the sentence for the offense for which the defendant was on parole "whether the judgment explicitly so orders or not." *Yates*, 2017 WL 2829821, at *1. Petitioner sought correction of the judgment, and the trial court entered an amended judgment. *Id.* Petitioner has since complained in two separate filings that the trial court was without jurisdiction to enter the amended judgment. Each time Petitioner's argument was properly rejected. Petitioner has failed to state a cognizable claim for habeas corpus relief. Petitioner is therefore not entitled to relief.

CONCLUSION

We affirm the judgment of the habeas corpus court.

THOMAS T. WOODALL, JUDGE