IN THE COURT OF CRIMINAL APPEALS OF	TENNESSEE	
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MARVIN ANTHONY MATHEWS,

Appellant,

VS.

STATE OF TENNESSEE,

Appellee.

March 27, 1997

C.C.A. NO. 01C01-9701-CH-00025 Cecil W. Crowson Appellate Court Clerk (No. 95-1072-I Below)

The Hon. Irvin Kilcrease, Jr.

(Dismissal of Habeas Corpus Petition)

<u>O R D E R</u>

This matter is before the Court upon the state's motion requesting that the judgment in the above-styled cause be affirmed pursuant to Rule 20, Tennessee Court of Criminal Appeals Rules. Finding that the appellant has failed to show that he is entitled to habeas corpus relief or that the chancery court had jurisdiction to consider the appellant's claims, we affirm the denial of the appellant's petition for habeas corpus relief.

The appellant filed a pro se petition for writ of habeas corpus in the chancery court of Davidson County. The chancery court denied the petition after finding that the appellant had failed to prove that habeas corpus relief was warranted in this matter. The chancery court also found that the issues raised in the appellant's petition were more properly raised in a petition for post-conviction relief and that it lacked jurisdiction to hear the cause. The record in this appeal was filed on September 26, 1996, in the Court of Appeals. By order of the Court of Appeals, entered on January 27, 1997, the above-styled cause was transferred to this Court.

In his petition and on appeal, the appellant contends that he was convicted under an unconstitutional habitual criminal statute. In the chancery court, the appellant also alleged that the judge hearing his original criminal cause was bias.

It is a well-established principle of law that the remedy of habeas corpus is

limited in its nature and its scope. <u>Archer v. State</u>, 851 S.W.2d 157, 161-162 (Tenn.1993); <u>Passarella v. State</u>, 891 S.W.2d 619, 626 (Tenn. Crim. App.1994). In Tennessee, habeas corpus relief is available only if "it appears upon 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." <u>Archer v. State</u>, 851 S.W.2d 157, 164 (Tenn.1993) (citation omitted in original). The appellant has the burden of establishing either a void judgment or an illegal confinement by a preponderance of the evidence. <u>Passarella</u>, 891 S.W.2d at 627. If he successfully carries his burden, the appellant is entitled to immediate release. <u>Id</u>.

As held by the chancery court, the appellant has failed to prove that he is entitled to habeas corpus relief. Instead, the appellant's complaints should have been raised in a petitioner for post-conviction relief pursuant to T.C.A. §§ 40-30-101 to -124 (repealed 1995). Under T.C.A. § 40-30-108 (repealed 1995), trial courts were to treat habeas petitions as post-conviction petitions "when the relief and procedure authorized by [the Post-Conviction Procedure Act] appear adequate and appropriate." Nonetheless, a petition for post-conviction relief must be filed with the clerk of the court where the conviction occurred. T.C.A. § 40-30-103 (repealed 1995). It appears that in this case, the proper court would have been the Criminal Court for Shelby County.

Based on our review of the appellant's pleadings, the state's motion, and the record in this case, we conclude that this is an appropriate case for affirmance under Rule 20.

IT IS, THEREFORE, ORDERED that the judgment of the trial court is affirmed pursuant to Rule 20, Tennessee Court of Criminal Appeals Rules.

ENTER, this the _____ day of March, 1997.

THOMAS T. WOODALL, JUDGE

CONCUR:

DAVID H. WELLES, JUDGE

JERRY L. SMITH, JUDGE