

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

FILED

November 4, 1997

Cecil W. Crowson
Appellate Court Clerk

CARL E. CHANEY, JR.,)
Appellant,) C.C.A. NO. 01C01-9708-CC-00372
VS.)
STATE OF TENNESSEE,) COFFEE COUNTY
) (No. 28,281 Below)
)
) The Hon. Gerald L. Ewell, Sr.
)
) (Dismissal of Habeas Corpus Petition)
) **AFFIRMED PURSUANT TO RULE 20**

ORDER

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. We find that this is an appropriate case for affirmance pursuant to Rule 20.

In his petition for writ of habeas corpus relief, the petitioner asserted that he was being illegally restrained because the preliminary hearing on his pending charges was conducted beyond the 10-day time period prescribed by Tenn. R. Crim. P. 5(d). It appears that while the petitioner was arrested on January 31, 1997, his preliminary hearing was not held until February 28, 1997. Subsequently, the petitioner was indicted by the grand jury of Coffee County on March 4, 1997, and arraigned on March 11, 1997.

In denying relief, the trial court stated:

Comes the District Attorney General and moves the Court for leave to enter a Dismissal in this cause, and it appearing to the Court that said motion is well taken, and should be granted, because the paper writing fails to allege illegal restraint and upon being questioned in open court if he was claiming illegal restraint the defendant replied, "No." The Court finds that the paper writing failes [sic] to comply with the mandatory provisions of T.C.A. 29-21-107.

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

limited in its nature and its scope. Archer v. State, 851 S.W.2d 157, 161-162 (Tenn.1993); Passarella v. State, 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." Archer v. State, 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. Passarella, 891 S.W.2d at 627. If he successfully carries his burden, the appellant is entitled to immediate release. Id.

From our review of the pleadings and of the record in this matter, we find that the petitioner is not entitled to habeas corpus relief.

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

ENTER this the ____ day of _____, 1997.

JOHN H. PEAY, JUDGE

CONCUR:

DAVID H. WELLES, JUDGE

THOMAS T. WOODALL, JUDGE