

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

FILED

03/29/2023

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. ANTWAIN TAPAIGE SALES

**Appeal from the Circuit Court for Bedford County
Nos. 16157, 16158 Forest A. Durard, Jr., Judge**

No. M2022-01077-CCA-R3-CD

The Defendant, Antwain Tapaige Sales, appeals the Bedford County Circuit Court's order dismissing his claim that his judgments of conviction for second degree murder and attempted second degree murder are fraudulent and void. After review, we conclude that the appeal should be dismissed.

Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed

JOHN W. CAMPBELL, SR., J., delivered the opinion of the court, in which TIMOTHY L. EASTER and TOM GREENHOLTZ, JJ., joined.

Antwain Tapaige Sales, Henning, Tennessee, Pro Se.

Jonathan Skrmetti, Attorney General and Reporter, and Caroline Weldon, Assistant Attorney General, for the appellee, State of Tennessee.

OPINION

FACTS

On April 23, 2007, the Defendant pled guilty in case number 16158 to second degree murder and attempted second degree murder and received concurrent sentences of forty and thirty years, respectively. According to the judgments of conviction, the effective forty-year sentence was to be served consecutively to sentences received in case numbers 14619 and 14778. In May 2011, the Defendant filed a petition for post-conviction relief. *See Antwain Tapaige Sales v. State*, No. M2011-02001-CCA-R3-PC, 2012 WL 4479283, at *1 (Tenn. Crim. App. Sept. 27, 2012). The post-conviction court dismissed the petition as untimely, and this court affirmed the judgment of the post-conviction court. *Id.* at *2. The Defendant filed federal and state habeas corpus petitions, which also were unsuccessful. *See Antwain Tapaige Sales v. State*, No. E2020-01471-CCA-R3-HC, 2021

WL 1994072, at *1 (Tenn. Crim. App. May 19, 2021), *perm. app. denied* (Tenn. July 12, 2021), *cert. denied* 142 S. Ct. 618 (2021), *reh'g denied* 142 S. Ct. 1201 (2022). In his state habeas corpus petition, the Defendant argued that the trial court clerk did not sign the indictment and judgments, that the trial court lacked jurisdiction, and that the judgments underlying his convictions were void. *Id.* The habeas corpus court dismissed his petition, and this court dismissed his appeal because his notice of appeal was untimely. *Id.* at *2.

On March 9, 2020, the Defendant filed a motion to correct an illegal sentence pursuant to Rule 36.1, Tennessee Rules of Criminal Procedure, arguing that his effective forty-year sentence in case number 16158 was illegal because he was on bail for possession of a Schedule IV substance in case number 16157 when he committed the offenses; thus, he was required to serve the sentences in the two cases consecutively. *See* Tenn. Code Ann. § 40-20-111(b); Tenn. R. Crim. P. 32(c)(3)(C). On April 3, 2020, the trial court entered an order summarily dismissing the motion on the basis that the Defendant failed to comply with the procedural requirements of Rule 36.1 because he failed to attach a copy of each judgment of conviction at issue and failed to state in the motion that it was the first motion for the correction of an illegal sentence or attach copies of any previous motions. *See* Tenn. R. Crim. P. 36.1(a)(1). The trial court also stated that

in reviewing the court file the Defendant was not convicted in this case. In fact, the Judgment entered in this matter on April 23, 2007, indicates case number 16157 was dismissed and was a misdemeanor drug possession charge. Even if convicted of a misdemeanor, in this case, the same did not require mandatory consecutive sentencing. T.C.A. § 40-20-111(b); T.R.Cr.P. 32(c)(3)[(C)].¹

On June 11, 2020, the Defendant filed a second pro se motion to correct an illegal sentence pursuant to Rule 36.1, Tennessee Rules of Criminal Procedure, making the same argument he did in his first Rule 36.1 motion. The Defendant, citing *State v. Brandon Rollen*, No. W2012-01513-CCA-R3-CD, 2013 WL 12181751, at *4 (Tenn. Crim. App. Sept. 11, 2013), and *George William Brady v. State*, No. E2013-00792-CCA-R3-PC, 2013 WL 6729908, at *6 (Tenn. Crim. App. Dec. 19, 2013), also asserted that he was not required to attach the judgments of conviction to his motion. Although the Defendant did not attach any judgments, he attached a copy of *State v. Omar Robinson*, No. E2014-00393-CCA-R3-CD, 2014 WL 5393240, at *2 n.2 (Tenn. Crim. App. Oct. 22, 2014), in which this court noted that a defendant was not required to attach supporting documents to a Rule

¹ The trial court's last sentence is incorrect. "There is no distinction between misdemeanor and felony offenses in the applicability of the bail statutes. . . . As such, a plain reading of Rule 32(c)(3)(C) and section 40-20-111(b) does not support the trial court's interpretation that consecutive sentencing is not mandatory when the underlying offense is a misdemeanor." *State v. Beau C. Vaughan*, No. M2014-02530-CCA-R3-CD, 2015 WL 8974913, at *3 (Tenn. Crim. App. Dec. 15, 2015).

36.1 motion. On June 30, 2020, the trial court entered an order summarily dismissing the motion. In the order, the trial court noted that Rule 36.1 was amended in 2016 to require that judgments of conviction be attached to the Rule 36.1 motion. Accordingly, the trial court again found that the Defendant failed to comply with the procedural requirements of Rule 36.1.

The Defendant did not appeal the trial court's order denying his second Rule 36.1 motion. More than two years later, on July 4, 2022, he sent a handwritten letter to the trial court clerk titled "Re: Fraud and Unlawful Entry (Request Oral Argument)." In the letter, which was filed on July 6, 2022, the Defendant stated that he had obtained copies of his judgments of conviction from the Records Department at Turney Center Industrial Complex and that "they are not even the same documents as the originals, that the movant retained from this court after his conviction and sentence in and on April 23, 2007." The Defendant alleged that the judgments were "fraudulent" and void because they had been "altered and/or modified in an attempt to cure a fatal defect." He also cited various Tennessee Rules of Civil Procedure. The Defendant did not explain how the judgments he obtained from the prison's Records Department differed from the original judgments but requested that he "be brought before this court to settle the dispute/controversy, as to the authenticity of these new and/or different documents[.]" The Defendant attached the two judgments of conviction in case number 16158 to his letter.

On July 8, 2022, the trial court entered an order titled "Order Dismissing Defendant's Hand-Written Letter Dated 07/04/2022," in which the trial court stated that it had compared the judgments attached to the Defendant's letter with the judgments filed by the trial court clerk and that "[a] comparison of the two Judgments finds no alteration. The only difference between the two is a file stamp affixed by the Clerk. Nothing relating to Defendant or his sentence has been altered. It is not known when these judgments were received by TDOC." The trial court said that the Defendant "also mentions some sort of fraud in his pleadings" but that he did not include any argument or documentation in support of his fraud claim. The record reflects that on July 26, 2022, the Defendant filed a motion to reconsider.² Three days later, the trial court entered an order dismissing that motion and stating as follows:

The Defendant has repeatedly argued his convictions are void because the clerk's stamp was not on some judgments received by TDOC. The Court has no idea the origins of these documents. The judgments the court received from the clerk are stamp-filed, which is the only distinction between the documents. The Defendant contends these are fraudulent in some respect. The Defendant is in error regarding his contentions.

² The motion to reconsider is not in the appellate record.

The trial court said that it would not entertain any further motions on the issue and that the Defendant could appeal the trial court's ruling.

In late July 2022, the Defendant mailed a handwritten "Motion to Show How the Trial Court is Being Unreasonable and Abusing Its Discretion" to this court, contesting the trial court's July 8, 2022 order. In the motion, the Defendant asserted that the judgments in case number 16158 had "clearly been altered and changed" because they did not bear a file-stamp date or the clerk's signature. The Defendant requested that this court give him "a full interpretation of the existing law" or remand the case to the trial court "with instructions to make the requisite findings of fact and conclusions of law and enter judgment accordingly." The clerk of this court treated the motion, which was filed on August 9, 2022, as a notice of appeal. On August 8, 2022, the Defendant filed a formal notice of appeal "from a final judgment entered in this action on the 8th day of July, 2022 dismissing his fraud and unlawful entry claims."

ANALYSIS

The Defendant appeals the trial court's July 8, 2022 order dismissing his claims that his judgments of conviction are fraudulent and void. He contends that his indictments, "guilty plea order," and judgments of conviction are illegal and void because the trial court clerk failed to sign and date-stamp the judgments. He also maintains that the judgments clearly have been altered because "[t]he original documents have no indications of additional pages in the top left corner" and because "the documents in TDOC and the trial court records will not properly align with the original documents in terms of the arrangement of the Contents of the documents, which symbolizes they are cut and pasted." Finally, he contends that the trial court "is in further error by presenting a partisan interest."

Relevant to this case, Tennessee Rule of Appellate Procedure 3(b) provides that a defendant may appeal as of right from an order revoking probation; an order entered pursuant to Tennessee Rules of Criminal Procedure 36, which provides that a trial court may correct clerical mistakes on judgments of conviction at any time; and an order entered pursuant to Tennessee Rule of Criminal Procedure 36.1, which provides that a defendant may file a motion to correct an unexpired illegal sentence. *See* Tenn. R. Crim. P. 36, 36.1. "A defendant in a criminal case has no appeal as of right unless it is enumerated in Rule 3(b)." *State v. Rowland*, 520 S.W.3d 542, 545 (Tenn. 2017). There is no appeal as of right from an order denying relief from a motion alleging that judgments of conviction are fraudulent and void because they were improperly entered or altered by the trial court clerk. Therefore, we conclude that the Defendant does not have an appeal as of right from the trial court's July 8, 2022 order.

CONCLUSION

After review, the appeal is dismissed.

JOHN W. CAMPBELL, SR., JUDGE