

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

JARRELL A. CAMPBELL v. STATE OF TENNESSEE

**Circuit Court for Wayne County
No. 15308**

No. M2013-00990-CCA-R3-HC Filed October 10, 2013

This matter is before the Court upon the State's motion to dismiss or in the alternative to affirm the judgment of the trial court by memorandum opinion pursuant to Rule 20, Rules of the Court of Criminal Appeals. Petitioner, Jarrell Antonio Campbell, has appealed the habeas corpus court's order dismissing his petition for writ of habeas corpus in which Petitioner alleged that his conviction for possession of less than .5 grams of cocaine with intent to sell or deliver was void because it was not ordered to be served consecutively to a previous conviction for which he was on parole at the time he committed the offense. Upon a review of the record in this case, we are persuaded that the trial court was correct in dismissing the petition for habeas corpus relief and that this case meets the criteria for affirmance pursuant to Rule 20, Rules of the Court of Criminal Appeals. Accordingly, the State's motion is granted, and the judgment of the trial court is affirmed.

Tenn. R. App. P. 3; Judgment of the Trial Court Affirmed Pursuant to Rule 20, Rules of the Court of Criminal Appeals

JERRY L. SMITH, J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER and JEFFREY S. BIVINS, JJ., joined.

Jarrell A. Campbell, pro se.

Robert E. Cooper, Jr., Attorney General & Reporter; Leslie Price, Assistant Attorney General, for the Appellee, State of Tennessee.

MEMORANDUM OPINION

On December 15, 2011, in Davidson County, Petitioner pled guilty to possession of less than .5 grams of cocaine with intent to sell or deliver. The trial court sentenced Petitioner to eight years to be served concurrently to a prior existing sentence.

Subsequently, Petitioner filed a petition for writ of habeas corpus in which he alleged that his convictions were void because he was on parole at the time of the plea and the trial court was required under Tennessee Rule of Criminal Procedure 32(c)(3)(A) to run his sentence for possession of less than .5 grams of cocaine with intent to sell or deliver consecutively to the sentence for which he was on parole. Petitioner alleged that the trial court illegally ran his sentences concurrently. The habeas corpus court entered an order dismissing the petition because Petitioner failed to state a cognizable claim. Petitioner has appealed.

ANALYSIS

The determination of whether to grant habeas corpus relief is a question of law. *See Hickman v. State*, 153 S.W.3d 16, 19 (Tenn. 2004). As such, we will review the habeas corpus court's findings de novo without a presumption of correctness. *Id.* 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). A writ of habeas corpus is available only when it appears on the face of the judgment or the record that the convicting court was without jurisdiction to convict or sentence the defendant or that the defendant is still imprisoned despite the expiration of his sentence. *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993); *Potts v. State*, 833 S.W.2d 60, 62 (Tenn. 1992). In other words, habeas corpus relief may be sought only when the judgment is void, not merely voidable. *See Taylor*, 995 S.W.2d at 83. "A void judgment 'is one in which the judgment is facially invalid because the court lacked jurisdiction or authority to render the judgment or because the defendant's sentence has expired.' We have recognized that a sentence imposed in direct contravention of a statute, for example, is void and illegal." *Stephenson v. Carlton*, 28 S.W.3d 910, 911 (Tenn. 2000) (quoting *Taylor*, 955 S.W.2d at 83).

However, if after a review of the habeas petitioner's filings the habeas corpus court determines that the petitioner would not be entitled to relief, then the petition may be summarily dismissed. T.C.A. § 29-21-109; *State ex rel. Byrd v. Bomar*, 381 S.W.2d 280 (Tenn. 1964). Further, a habeas corpus court may summarily dismiss a petition for writ of habeas corpus without the appointment of a lawyer and without an evidentiary hearing if there is nothing on the face of the judgment to indicate that the convictions addressed therein are void. *Passarella v. State*, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994).

The procedural requirements for habeas corpus relief are mandatory and must be scrupulously followed. *Summers v. State*, 212 S.W.3d 251, 260 (Tenn. 2007); *Hickman*, 153 S.W.3d at 19-20; *Archer*, 851 S.W.2d at 165. For the benefit of individuals such as the petitioner, our legislature has explicitly laid out the formal requirements for a petition for a writ of habeas corpus at Tennessee Code Annotated section 29-21-107:

(a) Application for the writ shall be made by petition, signed either by the party for whose benefit it is intended, or some person on the petitioner's behalf, and verified by affidavit.

(b) The petition shall state:

(1) That the person in whose behalf the writ is sought, is illegally restrained of liberty, and the person by whom and place where restrained, mentioning the name of such person, if known, and, if unknown, describing the person with as much particularity as practicable;

(2) The cause or pretense of such restraint according to the best information of the applicant, and if it be by virtue of any legal process, a copy thereof shall be annexed, or a satisfactory reason given for its absence;

(3) That the legality of the restraint has not already been adjudged upon a prior proceeding of the same character, to the best of the applicant's knowledge and belief; and

(4) That it is the first application for the writ, or, is a previous application has been made, a copy of the petition and proceedings thereon shall be produced, or satisfactory reasons be given for the failure so to do.

A habeas corpus court "properly may choose to summarily dismiss a petition for failing to comply with the statutory procedural requirements." *Summers*, 212 S.W.3d at 260; *see also Hickman*, 153 S.W.3d at 21.

Petitioner's writ of habeas corpus does not meet the mandatory statutory requirements. Petitioner attached judgment sheets for his 2011 conviction but failed to attach the judgment sheet from the conviction for which he claims he was on parole at the time of the 2011 offense. He has attached a "TOMIS Offender Sentence Letter," which has no verifying mark to his petition. This does not meet the requirement that the "best information," i.e. the

judgment, be attached to the petition. Failure to meet the statutory requirements is a reason in and of itself for the dismissal of a petition of writ of habeas corpus.

Furthermore, even if Petitioner had provided appropriate documentation, he is still not entitled to relief. It is true that Rule 32(c)(3)(A) of the Tennessee Rules of Criminal Procedure requires that a new sentence be run consecutively to a prior sentence when the new sentence derives from an offense committed while the defendant is on parole and is later convicted for both offenses. Rule 32(c)(3) states this is the case “whether the judgment explicitly so orders or not.” Under this Rule, Petitioner’s sentence for the conviction related to possession of cocaine should be run consecutively to his previous sentence.

However, in 2009, the General Assembly acted to limit habeas corpus relief on plea-bargained sentences further by adding the following language to the habeas corpus statute:

(b) Persons restrained of their liberty pursuant to a guilty plea and negotiated sentence are not entitled to the benefits of this writ on any claim that:

(1) *The petitioner received concurrent sentencing where there was a statutory requirement for consecutive sentencing;*

(2) The petitioner’s sentence included a release eligibility percentage where the petitioner was not entitled to any early release; or

(3) The petitioner’s sentence included a lower release eligibility percentage than the petitioner was entitled to under statutory requirements.

T.C.A. § 29-21-101 (emphasis added).

The judgment form for Petitioner’s conviction does not indicate whether the sentence was the result of a negotiated plea. The documents setting out the guilty plea or the transcript from the guilty plea hearing are also not included in the record. The Petitioner asserts that the plea was negotiated. However, absent evidence to that fact, we are unable to determine whether Tennessee Code Annotated section 29-21-101 applies. Therefore, the record is insufficient for our review.

Petitioner is not entitled to relief on this issue. Therefore, the habeas corpus court acted properly in summarily dismissing the petition.

CONCLUSION

Rule 20, Rules of the Court of Criminal Appeals provides inter alia:

The Court, with the concurrence of all judges participating in the case, when an opinion would have no precedential value, may affirm the judgment or action of the trial court by memorandum opinion rather than by formal opinion, when:

The judgment is rendered or the action taken in a proceeding before the trial judge without a jury, and such judgment or action is not a determination of guilt, and the evidence does not preponderate against the finding of the trial judge

We determine that this case meets the criteria of the above-quoted rule and, therefore, we grant the State's motion filed under Rule 20. We affirm the judgment of the trial court.

JERRY L. SMITH, JUDGE