

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs June 5, 2018

FILED

07/06/2018

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. GRADY DEWAYNE CARROLL

**Appeal from the Circuit Court for Madison County
Nos. 13-58, 13-59¹ Roy B. Morgan, Jr., Judge**

No. W2017-01952-CCA-R3-CD

The Appellant, Grady Dewayne Carroll, filed a motion to correct an illegal sentence pursuant to Tennessee Rule of Criminal Procedure 36.1, and the Madison County Circuit Court summarily denied the motion. On appeal, the Appellant contends that his effective four-year sentences for his reckless endangerment and felony evading arrest convictions are illegal because the trial court used a prior juvenile adjudication for aggravated robbery to sentence him as a Range II, multiple offender. Based upon the record and the parties' briefs, we affirm the Madison County Circuit Court's denial of the motion.

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

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which THOMAS T. WOODALL and ROBERT W. WEDEMEYER, JJ., joined.

Joseph T. Howell, Jackson, Tennessee, for the appellant, Grady Dewayne Carroll.

Herbert H. Slatery III, Attorney General and Reporter; Jonathan H. Wardle, Assistant Attorney General; Jody S. Pickens, District Attorney General; and Alfred Lynn Earls, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Factual Background

On July 15, 2013, the Appellant pled guilty to Class E felony reckless endangerment and Class E felony evading arrest. He also pled guilty to reckless driving

¹ As noted by the State, the Appellant's notice of appeal refers to two separate cases: case numbers 13-58 and 13-59. However, his Rule 36.1 motion, the State's response to the motion, the trial court's order denying the motion, and the judgments of conviction in the technical record refer to only one case, number 13-58.

and driving on a suspended license, Class B misdemeanors. The Appellant received concurrent four-year sentences as a Range II, multiple offender for each felony conviction and six months for each misdemeanor conviction for a total effective sentence of four years. The Appellant was to serve the sentences in confinement with pretrial jail credit from October 30, 2012 to July 15, 2013.

More than four years later, on August 14, 2017, the Appellant filed a pro se motion to correct an illegal sentence pursuant to Tennessee Rule of Criminal Procedure 36.1. Relevant to this appeal, the Appellant alleged that the trial court's imposition of Range II sentencing was based on the State's notice of enhanced punishment, which included a juvenile adjudication for aggravated robbery. The Appellant contended that the use of the juvenile adjudication to impose a Range II sentence violated Tennessee Code Annotated § 37-1-133(a), which provides that a juvenile adjudication is not a criminal conviction.

On August 17, 2017, the State responded, arguing that the trial court should summarily dismiss the motion because the Appellant's sentences had expired. In support of its argument, the State attached the Appellant's Tennessee Offender Management Information System (TOMIS) record, showing that the sentences for the offenses were imposed on July 15, 2013, and that the status of the convictions was "inactive." The State also argued that the motion failed to state a colorable claim in that the Appellant's sentences were agreed upon as part of a negotiated plea agreement and were not determined by the trial court. Therefore, the Appellant was not entitled to relief for his being sentenced outside his sentencing range pursuant to Brooks v. State, 756 S.W.2d 288, 291 (Tenn. Crim. App. 1988).

Just one day later, the trial court filed an order denying the Appellant's Rule 36.1 motion. In the order, the trial court agreed with the State's argument that the motion failed to state a colorable claim because "[t]he defendant entered guilty pleas in the above styled case and the sentence was negotiated by the State. The Court did not determine the sentence based upon the notice of enhancement filed by the State but accepted the sentence that the parties negotiated in the case." The order did not address whether the Appellant's sentences had expired. The Appellant filed a notice of appeal, and the trial court appointed counsel.²

² Effective July 1, 2017, Rule 4(a), Tennessee Rules of Appellate Procedure, was amended to require that notices of appeal be filed with the appellate court clerk rather than the trial court clerk. The Appellant tried to file a timely notice of appeal with the trial court clerk on September 15, 2017. The clerk returned the notice of appeal to him, instructing him to file it with this court. The Appellant filed his notice of appeal with this court on October 2, 2017. Although his notice of appeal was filed beyond the thirty-day time limit, this court may waive the timely filing in the interest of justice. See Tenn. R. App. P. 4(a). We choose to waive the timely filing in this case.

II. Analysis

On appeal, the Appellant contends that the trial court erred by dismissing his Rule 36.1 motion, maintaining that his four-year sentences were illegal because his juvenile adjudication for aggravated robbery was used to sentence him as a Range II, multiple offender. The State argues that the trial court properly denied the motion because the Appellant's sentences have expired and, in any event, an erroneous offender classification does not render a sentence illegal for purposes of Tennessee Rule of Criminal Procedure 36.1. We agree with the State that the trial court properly denied the motion.

Historically, “two distinct procedural avenues [were] available [in Tennessee] to collaterally attack a final judgment in a criminal case—habeas corpus and post-conviction petitions.” Hickman v. State, 153 S.W.3d 16, 19 (Tenn. 2004). However, “Rule 36.1 was adopted, effective July 1, 2013, with its express purpose ‘to provide a mechanism for the defendant or the State to seek to correct an illegal sentence.’” State v. Brown, 479 S.W.3d 200, 210-11 (Tenn. 2015) (quoting Tenn. R. Crim. P. 36.1, Advisory Comm’n Cmt.).

Tennessee Rule of Criminal Procedure 36.1(a)(1) provides that “[e]ither the defendant or the state may seek to correct an illegal sentence in the trial court in which the judgment of conviction was entered.” However, the motion “must be filed before the sentence set forth in the judgment order expires.” Tenn. R. Crim. P. 36.1(a)(1). “For purposes of this rule, an illegal sentence is one that is not authorized by the applicable statutes or that directly contravenes an applicable statute.” Tenn. R. Crim. P. 36.1(a)(2).

If the motion states a “colorable claim that the unexpired sentence is illegal,” the trial court shall determine if a hearing is necessary and appoint counsel. See Tenn. R. Crim. P. 36.1(b)(3). Our supreme court has recognized that “Rule 36.1 does not define ‘colorable claim.’” State v. Wooden, 478 S.W.3d 585, 592 (Tenn. 2015). Nevertheless, the court explained that “for purposes of Rule 36.1, . . . ‘colorable claim’ means a claim that, if taken as true and viewed in a light most favorable to the moving party, would entitle the moving party to relief under Rule 36.1.” Id. at 593. We note that

[e]xamples of illegal sentences include “sentences imposed pursuant to an inapplicable statutory scheme, sentences designating release eligibility dates where early release is statutorily prohibited, sentences that are ordered to be served concurrently where statutorily required to be served consecutively, and sentences not authorized by any statute for

the offense.” Wooden, 478 S.W.3d at 595. Conversely, “attacks on the correctness of the methodology by which a trial court imposed [a] sentence” will not rise to the level of an illegal sentence. Id.

State v. Joseph B. Thompson, No. E2015-01963-CCA-R3-CD, 2016 WL 2770178, at *1 (Tenn. Crim. App. at Knoxville, May 10, 2016).

Turning to the instant case, we are perplexed that the Appellant has failed to address the State’s claim that his sentences have expired because, if so, he clearly is not entitled to relief pursuant to Rule 36.1. As noted by the State, the trial court ordered an effective four-year sentence on July 15, 2013, and the Appellant received more than eight months of pretrial jail credit that extended back to October 30, 2012. He filed his Rule 36.1 motion on August 14, 2017, more than four years after he was sentenced. Accordingly, the Appellant’s sentences appear to have expired.

In any event, although Tennessee Code Annotated section 37-1-133(a) provides that juvenile adjudications do not qualify as criminal convictions, Tennessee Code Annotated section 40-35-106(b)(3)(B) provides for enhanced range classification upon “a finding or adjudication that a defendant committed an act as a juvenile that would constitute a Class A or Class B felony if committed by an adult.”³ Aggravated robbery is a Class B felony. Tenn. Code Ann. § 39-13-402(b). Therefore, there is no merit to the Appellant’s claim that his juvenile adjudication could not be used to classify him as a Range II offender.

Moreover, “[t]his court has repeatedly held that any claims of error by the trial court in determining offender classification did not render the sentence illegal and did not warrant relief pursuant to Tennessee Rule of Criminal Procedure 36.1.” State v. Michael V. Morris, No. M2017-01229-CCA-R3-CD, 2017 WL 6375952, at *2 (Tenn. Crim. App. at Nashville, Dec. 13, 2017). “While a trial court may make an error in offender classification, the error is not going to render the sentence illegal so long as the classification falls within the purview of the Sentencing Act.” Yates v. Parker, 371 S.W.3d 152, 156 (Tenn. Crim. App. 2012) (quoting Cantrell v. Easterling, 346 S.W.3d 445, 458 (Tenn. 2011)). In addition, “[a] plea-bargained sentence may legally exceed the maximum available in the offender Range so long as the sentence does not exceed the

³ Previously, Tennessee Code Annotated section 40-35-106(b)(3) (2006) did not allow trial courts to use a defendant’s prior juvenile adjudications to establish the defendant’s range classification. However, in 2010, our legislature amended the Code to allow for enhanced range classification pursuant to Tennessee Code Annotated section 40-35-106(b)(3)(B). The change was to apply “to all defendants committing offenses on or after July 1, 2010.” Tenn. Code Ann. § 40-35-106 (Compiler’s Notes). According to the Appellant’s judgments of conviction, he committed the offenses on August 31, 2012.

maximum punishment authorized for the plea offense.” Hoover v. State, 215 S.W.3d 776, 779 (Tenn. 2007). The Appellant’s four-year sentences for Class E felony reckless endangerment and Class E felony evading arrest were statutorily authorized sentences for a Range II, multiple offender. See Tenn. Code Ann. § 40-35-112(b)(5). Accordingly, the Appellant failed to state a colorable claim for relief in his motion, and the trial court properly dismissed the motion without a hearing.

III. Conclusion

Based upon the record and the parties’ briefs, we affirm the judgment of the trial court.

NORMA MCGEE OGLE, JUDGE