

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs April 18, 2007

**SIDNEY PORTERFIELD v. RICKEY J. BELL, WARDEN, STATE OF  
TENNESSEE**

**Direct Appeal from the Criminal Court for Davidson County  
No. 3740 Monte Watkins, Judge**

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**No. M2006-02082-CCA-R3-HC - Filed September 17, 2007**

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The petitioner, Sidney Porterfield, pro se, seeks habeas corpus relief from his 1986 Shelby County first degree murder conviction and death sentence, alleging his indictment was void because it was returned by a grand jury from which women had been systematically excluded as grand jury forepersons. He now appeals from the Davidson County dismissal of his petition. The State contends that this court is without jurisdiction to hear this appeal because the petitioner filed an untimely notice of appeal and offered no explanation and, further, that the petition does not meet all the criteria set forth in Tennessee Code Annotated section 29-21-107. Furthermore, the State contends that a void indictment does not deprive a trial court of jurisdiction, that the petitioner's claim is not cognizable for habeas corpus relief because proof beyond the face of the judgment and record is required, and that our Supreme Court has rejected an identical claim regarding discrimination in the selection of a grand jury foreperson in State v. Bondurant, 4 S.W.3d 662 (Tenn. 1999). After careful review, we conclude that the notice of appeal is not jurisdictional and may be waived in the interest of justice. However, without explanation or request being filed, the interest of justice weighs against waiver; therefore, we dismiss this appeal.

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

JOHN EVERETT WILLIAMS, J., delivered the opinion of the court, in which DAVID H. WELLES and ROBERT W. WEDEMEYER, JJ., joined.

Sidney Porterfield, Nashville, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; Cameron L. Hyder, Assistant Attorney General; Victor S. (Torry) Johnson, III, District Attorney General; Roger Moore, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

The first issue we need to address is whether this court lacks jurisdiction to hear this appeal and dismiss the same because the petitioner filed an untimely notice of appeal without an explanation or request to waive the timely filing of a notice of appeal. The trial court's order dismissing the petition for writ of habeas corpus was filed on May 18, 2005. The petitioner's notice of appeal was filed on September 26, 2005. Tennessee Rule of Appellate Procedure 4(a) provides that a notice of appeal must be filed within thirty days after the date of entry of the judgment. It also states that "in all criminal cases, the 'notice of appeal' document is not jurisdictional and the filing of such document may be waived in the interest of justice." The State contends that habeas corpus proceedings are civil in nature and that there is no authority to extend the "criminal case" exception contained in Tennessee Rule of Appellate Procedure 4(a) to habeas corpus appeals. The State held the same position regarding appeals in post-conviction cases, and our supreme court, in State v. Scales, 767 S.W.2d 157 (Tenn. 1989), concluded that their position was incorrect. Interestingly, the State in Scales cited numerous unreported cases in which this court repeatedly concluded that post-conviction proceedings were civil matters, not criminal matters. Our supreme court disagreed with that line of cases and stated: "The Court of Criminal Appeals in this case correctly construed the words 'criminal case' in Rule 4(a) to include appeals in post-conviction cases." Id. at 158.

We note with great interest that Tennessee Rules of Appellate Procedure 3(b) and (c) allow an appeal as of right from a final judgment in habeas corpus proceedings. Therefore, we conclude that the "notice of appeal" document is not jurisdictional and may be waived in the interest of justice.

The petitioner waited more than four months to file his notice of appeal. He offers no explanation for his untimely filing nor does he request that we waive a timely filing. We conclude that the interest of justice does not weigh in favor of waiving an untimely notice of appeal, and we dismiss the appeal.

Notwithstanding our opinion above, we address the remaining issues in this appeal so as not to pretermitt any issues raised. The State argues that this petition is subject to dismissal because it did not meet all the requirements contained in Tennessee Code Annotated section 29-21-207. Specifically, a copy of an earlier petition was not attached hereto, and satisfactory reasons for failing to do so were not given. The State acknowledges that this petition did state that the instant petition was not the petitioner's first.

Our supreme court in Archer v. State, 851 S.W.2d 157, 165 (Tenn. 1993), stated: "Without question, the procedural provisions of the habeas corpus statutes are mandatory and must be followed scrupulously." Commending the wisdom of the legislature, our supreme court in State ex rel. Allen v. Johnson, 394 S.W.2d 652, 653 (Tenn. 1965), concluded that failure of the petitioner to provide copies of previous petitions and proceedings or satisfactory reasons for failure to do so was proper grounds for a trial court to dismiss a petition. Most recently, in Summers v. State, 212 S.W.3d 251, 260 (Tenn. 2007), our supreme court restated, "A trial court properly may choose to summarily dismiss a petition for failing to comply with the statutory procedural requirements." See State ex rel. Allen v. Johnson, 394 S.W.2d at 653. We conclude that summary dismissal may have been proper upon the grounds stated above, The trial court, however, did not rely upon these grounds, and we also decline to do so.

The State contends that the trial court's dismissal was proper because even a void indictment would not deprive a trial court of jurisdiction. The State's brief reads as follows:

In the first place, even a void indictment would not have deprived the trial court of jurisdiction. Jurisdiction is created by the constitution and legislative acts. Osborn v. Marr, 127 S.W.3d 737, 739 (Tenn. 2004); Kane v. Kane, 547 S.W.2d 559, 560 (Tenn. 1977). An indictment merely invokes the exercise of the court's jurisdiction; it does not confer jurisdiction - only the constitution and statutes accomplish that. While an indictment must satisfy constitutional and statutory requirements, see State v. Hill, 954 S.W.2d 725, 727-29 (Tenn. 1997), it does not confer jurisdiction. That is conferred by the sovereign authority that organizes the courts. See Landers v. Jones, 872 S.W.2d 674, 675 (Tenn. 1994). A criminal court in Tennessee has subject-matter jurisdiction to try a defendant for any criminal offense punishable in this state because the legislature has given the court that authority. In petitioner's case, a criminal court certainly had subject-matter jurisdiction to try and sentence him for first-degree murder, a crime punishable in this state, regardless of the validity of the indictment.

The State's argument acknowledges that an indictment must satisfy constitutional and statutory requirements. "Generally stated, an indictment is valid if it provides sufficient information (1) to enable the accused to know the accusation to which answer is required, (2) to furnish the court adequate basis for the entry of proper judgment, and (3) to protect the accused from double jeopardy. State v. Hill, 954 S.W.2d 225, 727-29 (Tenn. 1997)(citing State v. Byrd, 820 S.W.2d 739, 741 (Tenn. 1991); VanArsdale v. State, 919 S.W.2d 626, 630 (Tenn. Crim. App. 1995); State v. Smith, 612 S.W.2d 493, 497 (Tenn. Crim. App. 1980)). The State's argument goes too far contending a void indictment would not deprive the trial court of jurisdiction. In Dykes v. Compton, 978 S.W.2d 528, 529 (Tenn. 1998), our supreme court stated: ". . . the validity of an indictment and the efficacy of the resulting conviction may be addressed in a petition for habeas corpus when the indictment is so defective as to deprive the court of jurisdiction." The court made it clear that "[a] valid indictment is an essential jurisdictional element, without which there can be no prosecution." Id. See Hill, 954 S.W.2d at 727; State v. Stokes, 954 S.W.2d 729, 730 (Tenn. 1997).

We have reviewed the indictment and conclude that it performed its essential constitutional and statutory purposes as set forth in Hill. Therefore, the trial court was vested with jurisdiction and the resulting judgment of conviction is valid.

Addressing the last of the State's contentions, we agree that the petitioner's claim is not cognizable in a petition for habeas corpus relief because, in order to establish his claim, the petitioner is required to produce proof beyond the face of the judgment and the record of the underlying proceeding. The petitioner claims his indictment is void because women have been systematically excluded as grand jury forepersons in Shelby County, an issue of fact that would require a hearing and the introduction of proof. We are reminded in Summers that proof in a habeas corpus action is limited to the face of the judgment and the record of the underlying convictions. Whenever proof beyond the judgment and record of the underlying proceedings is required in order to substantiate a claim, such is not cognizable in a habeas corpus action. If we were inclined to accept the petitioner's claim as true, State v. Bondurant, 4 S.W.3d 662, 674 (Tenn. 1999), instructs us that a

claim involving discrimination in the selection of grand jury forepersons does not establish a prima facie claim because the proof must show that the discrimination tainted the entire grand jury.

#### Conclusion

We conclude that the “notice of appeal” document is not jurisdictional in appeals of habeas corpus actions and may be waived in the interest of justice. However, upon the record, the interest of justice does not weigh in favor of granting this petitioner a waiver from a timely filing of a notice of appeal. This appeal is dismissed.

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JOHN EVERETT WILLIAMS, JUDGE