

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs March 13, 2018

FILED
06/29/2018
Clerk of the
Appellate Courts

E. LOUIS THOMAS v. GRADY PERRY, WARDEN

Appeal from the Circuit Court for Hardeman County
No. 2017-CR-105 Joe H. Walker, III, Judge

No. W2017-01587-CCA-R3-HC

The pro se Petitioner, E. Louis Thomas, appeals the summary dismissal of his petition for writ of habeas corpus. Following our review, we affirm the dismissal of the petition.

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

ALAN E. GLENN, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and TIMOTHY L. EASTER, JJ., joined.

E. Louis Thomas, Whiteville, Tennessee, Pro Se.

Herbert H. Slatery III, Attorney General and Reporter; Ronald L. Coleman, Assistant Attorney General; Mark E. Davidson, District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTS

On September 27, 2007, the Petitioner was convicted of first-degree premeditated murder and felony murder. State v. E. Louis Thomas, No. W2008-01360-CCA-R3-CD, 2010 WL 2977874, at *1 (Tenn. Crim. App. July 29, 2010), perm. app. denied (Tenn. Jan. 18, 2011). The Petitioner's murder convictions were merged, resulting in a life sentence in the Tennessee Department of Correction. Id. The Petitioner's convictions were affirmed on appeal. Id. Subsequently, he filed a petition for post-conviction relief, which this court dismissed as untimely. E. Louis Thomas v. State, No. W2012-00999-CCA-MR3-PC, 2013 WL 6001938, at *1 (Tenn. Crim. App. Nov. 8, 2013), perm. app. denied (Tenn. Mar. 5, 2014).

On June 16, 2016, the Petitioner filed a pro se petition for writ of habeas corpus, in which he alleged that “he received the ineffective assistance of counsel and that the trial court violated his right to a fair trial by admitting a coerced statement.” E. Louis Thomas v. Grady Perry, Warden, No. W2016-01514-CCA-R3-HC, 2017 WL 401360, at *1 (Tenn. Crim. App. Jan. 27, 2017), perm. app. denied (Tenn. Apr. 12, 2017). The habeas corpus court entered an order summarily denying the petition on the grounds that the Petitioner had not alleged a cognizable claim for relief, his sentence had not expired, and the trial court possessed jurisdiction to sentence him. Id. at *1-2. This denial was affirmed by this court, which concluded that the Petitioner did not have a cognizable claim for habeas corpus relief. Id. at *2.

On July 5, 2017, the Petitioner filed a second pro se petition for habeas corpus, asserting that he had a conviction for aggravated robbery which was facially void because he was never indicted for the charge. On July 18, 2017, the habeas corpus court dismissed the petition, finding that the Petitioner’s judgments only evidenced a conviction for murder and did not evidence an amended indictment for aggravated robbery, that the sentence for murder had not expired, and that relief was, therefore, inappropriate. This timely appeal followed.

ANALYSIS

On appeal, the Petitioner asserts that he is entitled to habeas corpus relief due to an aggravated robbery conviction. Specifically, the Petitioner alleges that “the trial court exceeded its authority/jurisdiction by convicting the petitioner of an offense not charged by the [i]ndictment,” rendering the conviction for aggravated robbery void. The State responds that, due to the Petitioner’s failure to attach the judgment for the aggravated robbery conviction to his petition and, therefore, to provide sufficient documentation supporting his claim, he is not entitled to relief. We agree.

It is well-established in Tennessee that the remedy provided by a writ of habeas corpus is limited in scope and may only be invoked where the judgment is void or the petitioner’s term of imprisonment has expired. Faulkner v. State, 226 S.W.3d 358, 361 (Tenn. 2007); State v. Ritchie, 20 S.W.3d 624, 629 (Tenn. 2000); State v. Davenport, 980 S.W.2d 407, 409 (Tenn. Crim. App. 1998). A void, as opposed to a voidable, judgment is “one that is facially invalid because the court did not have the statutory authority to render such judgment.” Summers v. State, 212 S.W.3d 251, 256 (Tenn. 2007) (citing Dykes v. Compton, 978 S.W.2d 528, 529 (Tenn. 1998)). A challenge to the sufficiency of an indictment may be brought in a habeas corpus proceeding if “the indictment is so defective as to deprive the court of jurisdiction.” Dykes, 978 S.W.2d at 529.

A petitioner bears the burden of establishing a void judgment or illegal confinement by a preponderance of the evidence. Wyatt v. State, 24 S.W.3d 319, 322 (Tenn. 2000). Furthermore, when a “corpus petition fails to establish that a judgment is void, a trial court may dismiss the petition without a hearing.” Summers, 212 S.W.3d at 260 (citing Hogan v. Mills, 168 S.W.3d 753, 755 (Tenn. 2005)). Whether the petitioner is entitled to habeas corpus relief is a question of law. Id. at 255; Hart v. State, 21 S.W.3d 901, 903 (Tenn. 2000). As such, our review is de novo with no presumption of correctness given to the habeas court’s findings and conclusions. Id.

We conclude that the habeas court properly dismissed the petition. The Petitioner failed to comply with the mandatory requirements for habeas corpus petitions under Tennessee Code Annotated section 29-21-107(b)(2) by failing to include a copy of the judgment for aggravated robbery complained of, thus precluding adequate review by this court. “The petitioner bears the burden of providing an adequate record for summary review of the habeas corpus petition.” Summers, 212 S.W.3d at 261. “[A]n adequate record for summary review must include pertinent documents to support those factual assertions” contained in the petition. Id. “[T]he procedural requirements for habeas corpus relief are mandatory and must be scrupulously followed.” Id. at 254 (citing Archer v. State, 851 S.W.2d 157, 165 (Tenn. Mar. 22, 1993)). “When a petitioner fails to attach to his petition sufficient documentation supporting his claims, the habeas corpus court may summarily dismiss the petition.” Derron S. Guy v. Cherry Lindamood, Warden, No. W2012-00759-CCA-R3-HC, 2012 WL 5943396, at *2 (Tenn. Crim. App. Nov. 28, 2012) (citing Summers, 212 S.W.3d at 261).

The only reference to aggravated robbery is in the trial judge’s report from the first degree murder trial. However, this does not evidence a conviction for aggravated robbery, and the Petitioner has produced no evidence of such. Moreover, there has been no prior discussion of an aggravated robbery conviction either on direct appeal or post-conviction appeal. Further, by failing to attach a judgment for aggravated robbery, the Petitioner has failed to satisfy his burden of demonstrating that the aggravated robbery conviction is void and that he is entitled to relief. Accordingly, we affirm the summary dismissal of the petition for writ of habeas corpus.

CONCLUSION

Because the Petitioner failed to state a cognizable claim for habeas corpus relief, we affirm the summary dismissal of the petition for writ of habeas corpus.

ALAN E. GLENN, JUDGE