

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs October 6, 2015

MARIO D. THOMAS v. STATE OF TENNESSEE

Appeal from the Circuit Court for Hardeman County
No. CC15CR63 Joseph H. Walker, III, Judge

No. W2015-00748-CCA-R3-HC – Filed November 30, 2015

In this appeal, pro se Petitioner Mario D. Thomas challenges the Hardeman County Circuit Court's summary dismissal of his petition for writ of habeas corpus relief. Upon our review, we affirm the judgment of the habeas corpus court pursuant to Rule 20 of the Rules of the Court of Criminal Appeals of Tennessee.

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

CAMILLE R. MCMULLEN, J., delivered the opinion of the court, in which THOMAS T. WOODALL, P.J., and ROBERT L. HOLLOWAY, JR., J., joined.

Mario D. Thomas, Whiteville, Tennessee, pro se.

Herbert H. Slatery III, Attorney General and Reporter; Rachel E. Willis, Senior Counsel; D. Michael Dunavant, District Attorney General; and James T. Cannon, Assistant District Attorney General, for the Appellee, State of Tennessee.

MEMORANDUM OPINION

In 2003, the Petitioner, along with two codefendants, was convicted by an Obion County Circuit Court jury of felony murder, second degree murder, and conspiracy to commit second degree murder. The convictions for first degree felony murder and second degree murder were merged, and the Petitioner was sentenced to life without parole for first degree felony murder and eight years for the conspiracy to commit second degree murder. The Petitioner appealed arguing, *inter alia*, that the verdicts of first degree felony murder and conspiracy to commit second degree murder were impermissibly inconsistent. State v. Clarence Carnell Gaston, Miqwon Deon Leach, and Mario Deangalo Thomas, No. W2001-02046-CCA-R3-CD, 2003 WL 261941, at *1 (Tenn. Crim. App. Feb. 7, 2003), perm. app. denied (Tenn. Sept. 2, 2003). In affirming

the Petitioner's convictions and sentence, this Court rejected the Petitioner's claim that the jury's verdicts were impermissibly inconsistent and reasoned:

Thomas . . . asserts that by finding him guilty of the lesser offenses of conspiracy to commit second degree murder and second degree murder, the jury necessarily rejected the State's theory that he was attempting to commit a first degree premeditated murder at the time the victim was killed, thereby invalidating his conviction for felony murder. However, as Thomas recognizes, our supreme court has long held that consistency between verdicts on separate counts of an indictment is not required in Tennessee. In Wiggins v. State, 498 S.W.2d 92, 93 (Tenn.1973), our supreme court, adopting the rationale of the United States Supreme Court in Dunn v. United States, 284 U.S. 390, 52 S.Ct. 189, 76 L.Ed. 356 (1932), concluded that consistency between verdicts is not required to sustain a conviction.

. . . .

Under *Wiggins*, the jury's findings that Thomas was guilty of second degree murder and conspiracy to commit second degree murder did not preclude its finding that he was also guilty of first degree felony murder.

Id. at *13-14.

In 2004, the Petitioner filed a timely pro se motion for post-conviction relief, alleging a violation of the Interstate Compact on Detainers Act, the denial of his right to testify at trial, and ineffective assistance of counsel. The post-conviction court denied relief, and this Court affirmed the judgment on appeal. Mario Deangalo Thomas v. State, No. W2004-01704-CCA-R3-PC, 2005 WL 1669898, at *1 (Tenn. Crim. App. July 18, 2005), perm. app. denied (Tenn. Dec. 5, 2005). The Petitioner's subsequent motion to reopen post-conviction proceedings was also denied. Mario Thomas v. State, No. W2011-01635-CCA-R3-PC, 2012 WL 601117, at *1 (Tenn. Crim. App. Feb. 24, 2012), perm app. denied (Tenn. June 20, 2012).

Over ten years later, on April 8, 2015, the Petitioner filed a pro se petition for writ of habeas corpus. On April 15, 2015, the habeas corpus court entered an order summarily dismissing the petition, reasoning that the Petitioner failed to raise any cognizable claims for relief. It is from this order that the Petitioner now appeals.

ANALYSIS

The Petitioner alleges that the habeas corpus court erred in dismissing his petition without the benefit of an evidentiary hearing. As we understand the petitioner's claims, his specific grounds for relief are: (1) the trial court improperly amended his verdicts, (2) the jury improperly convicted him of first degree felony murder without convicting him of the underlying felony, and (3) his conviction for conspiracy to commit second degree murder is void because the named victim was not killed.¹ In response, the State argues that summary dismissal was proper because the Petitioner failed to put forth any meritorious claims entitling him to relief. Upon review, we agree with the State.

“The determination of whether habeas corpus relief should be granted is a question of law.” Faulkner v. State, 226 S.W.3d 358, 361 (Tenn. 2007) (citing Hart v. State, 21 S.W.3d 901, 903 (Tenn. 2000)). Accordingly, our review is de novo without a presumption of correctness. Summers v. State, 212 S.W.3d 251, 255 (Tenn. 2007) (citing State v. Livingston, 197 S.W.3d 710, 712 (Tenn. 2006)).

A prisoner is guaranteed the right to habeas corpus relief under Article I, section 15 of the Tennessee Constitution. Tenn. Const. art. I, § 15; see T.C.A. §§ 29-21-101 to -130. The grounds upon which a writ of habeas corpus may be issued, however, are very narrow. Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). “Habeas corpus relief is available in Tennessee only when ‘it appears upon the face of the judgment or the record of the proceedings upon which the judgment is rendered’ that a convicting court was without jurisdiction or authority to sentence a defendant, or that a defendant’s sentence of imprisonment or other restraint has expired.” Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993) (quoting State v. Galloway, 45 Tenn. (5 Cold.) 326, 337 (1868)). A habeas corpus petition challenges void and not merely voidable judgments. Summers, 212 S.W.3d at 255 (citing Potts v. State, 833 S.W.2d 60, 62 (Tenn. 1992)). “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.”

¹ As stated in his brief, the Petitioner’s claims are as follows:

- (1) That the trial court . . . lacked jurisdiction or authority to change the jury verdict after it was discharged from a felony murder conviction to a first degree murder conviction at the State request on May 31, 2001 after the jury’s [sic] had found [petitioner] not guilty of first degree murder; and
- (2) That petitioner’s conviction and life sentence without parole [are] void . . . because the jury has violated its oath and the law by willfully rendered [sic] a verdict finding him guilty of first degree felony murder contrary to the law[] in violation of Tenn. Code Ann. §§ 39-13-202(2); and
- (3) That the trial court . . . lacked jurisdiction to enter[] the judgment for conspiracy to commit second degree murder of Jeff Young because Mr. Young was not killed in this case at the time the victim Mr. Demond was shot and killed[.]

Taylor, 995 S.W.2d at 83 (citing Dykes v. Compton, 978 S.W.2d 528, 529 (Tenn. 1998); Archer, 851 S.W.2d at 161-64). However, a voidable judgment “is facially valid and requires proof beyond the face of the record or judgment to establish its invalidity.” Summers v. State, 212 S.W.3d 251, 256 (Tenn. 2007) (citing Dykes, 978 S.W.2d at 529). Thus, “[i]n all cases where a petitioner must introduce proof beyond the record to establish the invalidity of his conviction, then that conviction by definition is merely voidable, and a Tennessee court cannot issue the writ of habeas corpus under such circumstances.” State v. Ritchie, 20 S.W.3d 624, 633 (Tenn. 2000). Moreover, it is the petitioner’s burden to demonstrate, by a preponderance of the evidence, that the judgment is void or that the confinement is illegal. Wyatt v. State, 24 S.W.3d 319, 322 (Tenn. 2000). If this burden is met, the Petitioner is entitled to immediate release. State v. Warren, 740 S.W.2d 427, 428 (Tenn. Crim. App. 1986) (citing Ussery v. Avery, 432 S.W.2d 656, 658 (Tenn. 1968)).

If the habeas corpus court determines from the petitioner’s filings that no cognizable claim has been stated and that the petitioner is not entitled to relief, the petition for writ of habeas corpus may be summarily dismissed. See Hickman, 153 S.W.3d at 20. Further, the habeas corpus court may summarily dismiss the petition 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 are void. Passarella v. State, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994), superseded by statute as stated in State v. Steven S. Newman, No. 02C01-9707-CC-00266, 1998 WL 104492, at *1 n.2 (Tenn. Crim. App., at Jackson, Mar. 11, 1998). “The petitioner bears the burden of providing an adequate record for summary review of the habeas corpus petition, including consideration of whether counsel should be appointed.” Summers, 212 S.W.3d at 261.

The Petitioner argues that his first degree murder judgment is void because “the Trial Court . . . lacked jurisdiction . . . to change the jury verdict after its [sic] was discharged, from a felony murder conviction, [sic] to a first degree murder conviction at the State [sic] request on May 31, 2001, after the jury’s [sic] had found [the Petitioner] not guilty of first degree murder on March 16, 2001[.]” The Petitioner insists that “it was a fatal error for the trial court to change the jury verdict at the State[’s] request once the jury was discharged.” The State responds that the trial court initially entered an erroneous judgment reflecting a conviction for premeditated murder, which was a clerical error. The trial court later entered a second judgment to reflect felony murder, which is consistent with the transcript of the jury verdict. Upon our review, we agree with the State.

The Petitioner’s brief notes that at the May 31, 2001 sentencing hearing, the State requested the trial court to “change the jury verdict from a conviction for felony murder

to a conviction for first degree murder whereby the State corrected the March 16, 2001 felony murder to reflect a correct conviction for first degree murder[.]” In reality, the record shows that on May 31, 2001, the trial court entered a “corrected judgment” listing the conviction offense for Count 2 as “First Degree Murder-Premeditated” and noting in the special comments that the judgment was corrected to reflect the correct social security number. Significantly, the record does not include the original judgment. At some point not borne out by the record, the trial court entered another “corrected judgment” for Count 2 listing the conviction offense as “First Degree Murder-Felony,” and noting in the special comments that the corrected judgment was entered to reflect the correct conviction offense.² The transcript from the jury verdict, attached to the petition, shows that the jury convicted the Petitioner of criminal conspiracy to commit second degree murder for count 1, felony first degree murder for count 2, and second degree murder for count 3. Because the offense of conviction for count 2 was in fact first degree felony murder, the corrected judgment form listing the offense of conviction as first degree premeditated murder was in error. However, under these circumstances, we conclude that the corrected judgment reflecting a conviction for first degree premeditated murder rather than first degree felony murder was a clerical error, which the trial court properly corrected by the amended judgment. See Cantrell v. Easterling, 346 S.W.3d 445, 449 (Tenn. 2011) (clerical errors arise from “mistake[s] in filling out the uniform judgment document”); see also Tenn. R. Crim. P. 36 (providing that “the court may at any time correct clerical mistakes in judgments, orders, or other parts of the record, and errors in the record arising from oversight or omission”). As this issue does not present a cognizable habeas corpus claim, the petitioner is not entitled to relief.

Next, the Petitioner argues that the jury “violated its oath and the law” by improperly convicting him of first degree felony murder “in violation of Tenn. Code Ann. §§ 39-13-202(2) (felony murder statute),” by not applying the law to the facts of the case, and by disregarding the law as provided them by the trial court. We are compelled to note that our review of this issue is hindered by the limited record on appeal. We do not have the indictments or a complete set of jury instructions to determine the context of the Petitioner’s claim. The direct appeal notes that the petitioner was charged with conspiracy to commit first degree murder, first degree felony murder, and first degree premeditated murder. We do not know the named victims or the corresponding counts within the indictment. The petitioner attached the following four judgments to his petition: (1) for count 2, a “corrected judgment” listing a conviction for first degree premeditated murder with a note in the special conditions that it was corrected to reflect the correct social security number; (2) for count 2, another “corrected judgment” listing a conviction for first degree felony murder with a note in the special conditions that it was

² The copy of the corrected judgment submitted in the appellate record is neither signed by a judge nor is it stamped filed to reflect the date of entry.

reflecting the correct conviction offense; (3) for count 3, a judgment listing the charged offense as first degree murder and the conviction offense as second degree murder and noting that it was merged into count 2; and (4) for count 1, a judgment listing the charged offense as criminal conspiracy to commit first degree murder and the same for the conviction offense. He also attached pages from the transcript of the jury instructions for criminally negligent homicide, first degree felony murder noting “that the killing was committed in the perpetration of or attempt to perpetrate the alleged first degree murder,” and the elements of first degree murder.

As noted above, the jury convicted the petitioner of criminal conspiracy to commit second degree murder for count 1, felony first degree murder for count 2, and second degree murder for count 3. The trial court merged count 3 into count 2. To the extent that we understand the petitioner’s argument, he believes that his first degree felony murder judgment is void because the jury did not follow the instructions given to them by the judge. He further argues that his conviction for conspiracy to commit second degree murder is void because the named victim was not killed. Here, the Petitioner did not provide this court with the indictment or transcripts in support his claim. Regardless, even if true, the Petitioner’s claims essentially challenge the sufficiency of the convicting evidence, which is not a cognizable claim in a habeas corpus proceeding. See Gant v. State, 507 S.W.2d 133, 136 (Tenn. Crim. App. 1973) (stating that habeas corpus proceedings may not be used to challenge the sufficiency of evidence presented at trial), perm. app. denied (Tenn. Feb. 4, 1974). The sufficiency of the convicting evidence in this case was upheld on direct appeal. See Clarence Carnell Gaston, Miqwon Deon Leach, and Mario Deangalo Thomas, 2003 WL 261941, at *11-15. Because the petition does not present a cognizable claim of habeas corpus relief, summary dismissal was proper.

CONCLUSION

Pursuant to Rule 20 of the Rules of the Court of Criminal Appeals of Tennessee, we affirm the habeas court’s summary dismissal of the petition for writ of habeas corpus.

CAMILLE R. McMULLEN, JUDGE