

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs June 20, 2006

STATE OF TENNESSEE v. THOMAS RAY BRYANT

**Direct Appeal from the Criminal Court for Smith County
No. 97-92 J.O. Bond, Judge**

No. M2005-02356-CCA-R3-CD - Filed October 13, 2006

Defendant, Thomas Ray Bryant, filed a notice of appeal, pursuant to Tennessee Rule of Appellate Procedure 3(b) from the trial court's denial of Defendant's "Motion to Set Aside Amended Judgment." After review of the entire record and applicable case law, we dismiss the appeal.

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

THOMAS T. WOODALL, J., delivered the opinion of the court, in which DAVID G. HAYES and NORMA MCGEE OGLE, JJ. joined.

Jack O. Bellar, Carthage, Tennessee, for the appellant, Thomas Ray Bryant.

Paul G. Summers, Attorney General and Reporter; Elizabeth B. Marney, Assistant Attorney General; Tom P. Thompson, Jr., District Attorney General, for the appellee, the State of Tennessee.

OPINION

From this rather sparse record, we have determined that Defendant was originally indicted on a charge of rape of a child. He pled guilty to the "amended charge" of aggravated sexual battery on August 11, 1998. According to the judgment, he received a sentence of eight years to serve by incarceration, and was ordered to submit to DNA testing, and be placed on the "sexual register," presumably with the Tennessee Bureau of Investigation.

On March 30, 2005, the trial court filed an "Amended Judgment" in this same case. The "Amended Judgment" has basically the same information contained in the original judgment, but reflects that the conviction offense is one of "Aggravated Sexual Assault," in violation of Tennessee Code Annotated section 39-2-606. This statutory section was repealed prior to the offense date of May 9, 1997. 1989 Tenn. Pub. Acts ch. 591. In addition, the "Amended

Judgment” states that Defendant was sentenced to community supervision for life following the expiration of his sentence pursuant to Tennessee Code Annotated section 39-13-524.

On April 28, 2005, Defendant, through counsel, filed a “Motion to Set Aside Amended Judgment.” In this motion, he alleged that he did not receive prior notice of entry of the March 30, 2005, “Amended Judgment” and did not receive notice of same until approximately April 19, 2005. Defendant alleged that he had “served his original sentence,” which had been an agreed upon sentence, complied “with DNA requirements and sexual registry requirements,” and alleged that the trial court was without authority to amend the original judgment entered August 11, 1998. The original judgment and the “Amended Judgment” both note that Defendant pled guilty in August 1998.

After Defendant filed his “Motion to Set Aside Amended Judgment,” the trial court entered a “Corrected Judgment” on August 3, 2005. In this “Corrected Judgment,” the information was the same as in the “Amended Judgment” except that the conviction offense was properly noted as aggravated sexual battery in violation of Tennessee Code Annotated section 39-13-504. Again, the “Corrected Judgment” also had the provision that Defendant was sentenced to community supervision for life. On September 6, 2005, an order was filed wherein the trial court denied Defendant’s “Motion to Set Aside Amended Judgment” and found Defendant to be indigent. In this order, the trial court specifically found that no notice to Defendant was necessary for entry of the amended judgment because the “entry of Order [sic] was clerical in nature.” A notice of appeal pursuant to Rule 3(b) of the Tennessee Rules of Appellate Procedure was filed by the Defendant on September 28, 2005, noting that the appeal was taken from the trial court’s judgment entered September 6, 2005.

There are several procedural problems with this case. There is no transcript in the record of any arguments or proof which might have been presented in the trial court. The “Motion to Set Aside Amended Judgment,” while it alleges that the trial court was without authority to amend the judgment, does not specifically state how the judgment was amended. On appeal, Defendant complains that he should not be required to be sentenced to community supervision for life pursuant to Tennessee Code Annotated section 39-13-524.

In addition, from the record, it appears that the “Amended Judgment” *was* set aside, albeit not for the reason Defendant requested. The “Corrected Judgment” was filed *after* Defendant filed his “Motion to Set Aside Amended Judgment,” but only changed the name and the statute of the “conviction offense” and still required Defendant to be sentenced to community supervision for life. The order filed by the trial court on September 6, 2005, does not clearly reflect that Defendant’s motion had been amended to challenge the “Corrected Judgment” and refers to the Defendant’s motion to “Set Aside Amended Order.” The notice of appeal, as stated above, was taken from the order entered September 6, 2005.

What is clear from the record is that Defendant is not attacking the original judgment entered in his case on August 11, 1998. He is, instead, attacking the “Amended Judgment” entered March 30, 2005, and also attacking the “Corrected Judgment” entered August 3, 2005. It is clear that Defendant attacks the amended and/or corrected judgments on the basis that they are

void, as Defendant alleges that the trial court was “without authority by statute or under rules of Criminal Procedure to amend the [original] Judgment entered August 11, 1998.”

In *Moody v. State*, 160 S.W.3d 512 (Tenn. 2005), our supreme court held that, “Tennessee Rule of Appellate Procedure 3(b) does not authorize a direct appeal of a dismissal of a motion to correct an illegal sentence” *Id.* at 516.

In *Moody*, the trial court denied the defendant’s motion to correct an illegal sentence, and in the case *sub judice*, the trial court, apparently *sua sponte*, entered an “Amended Judgment.” The essence of Defendant’s complaint as set forth in his motion is that the resulting amended judgment is an illegal sentence.

The supreme court went on to state in *Moody* that, “[w]e clarify that the proper procedure for challenging an illegal sentence at the trial level is through a petition for writ of habeas corpus, the grant or denial of which can then be appealed under the Rules of Appellate Procedure.”

Defendant’s “Motion to Set Aside Amended Judgment” does not comply with the strict procedural requirements for filing a petition for writ of habeas corpus. *See* T.C.A. § 29-21-107 (2007). Since there is no direct appeal authorized by the rules of appellate procedure from the dismissal of a motion to correct an illegal sentence, Defendant’s appeal in this case must be dismissed.

We note that in *Moody*, the supreme court specifically said that the dismissal of that appeal was without prejudice to the filing of a habeas corpus action presenting the defendant’s illegal sentence claims. Technically, the same is true in the case *sub judice*, but *see State v. Bronson*, 172 S.W.3d 600, 601-02 (Tenn. Crim. App. 2005)(holding that although “the failure to include the community supervision for life provisions rendered the defendants’ sentences illegal, . . . [t]he trial court had jurisdiction to correct the illegal sentences by amending the judgments of convictions”).

There is one final note that we must make in this case. The original judgment was a preprinted form, with the blanks filled in by hand rather than being typed. The year of Defendant’s birth on the original judgment could be interpreted as “44,” “74,” or “94.” On both the “Amended Judgment” and the “Corrected Judgment” the birth date of Defendant is noted as in the year “1994.” Obviously, from the date of the offense being in 1997, the year of Defendant’s birth in the final “Corrected Judgment” in this case is an error. The trial court should correct this clerical error.

CONCLUSION

For the above stated reasons, we dismiss Defendant’s appeal.

THOMAS T. WOODALL, JUDGE