

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

**JAMES M. GRANT V. STATE OF TENNESSEE and HOWARD
CARLTON, WARDEN**

**Appeal from the Criminal Court for Davidson County
No. 96-D-1897 J. Randall Wyatt, Jr., Senior Judge**

No. M2006-01368-CCA-R3-HC - Filed October 2, 2006

This matter is before the Court upon the State's motion to affirm the judgment of the habeas corpus court by memorandum opinion pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. The petitioner has appealed the habeas corpus court's order summarily dismissing the petition for writ of habeas corpus. Upon a review of the record in this case, we are persuaded that the habeas corpus court was correct in summarily dismissing the habeas corpus petition and that this case meets the criteria for affirmance pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. Accordingly, the State's motion is granted and the judgment of the habeas corpus court is affirmed.

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

JERRY L. SMITH, J., delivered the opinion of the court, in which DAVID H. WELLES, and ROBERT W. WEDEMEYER, JJ., joined.

James M. Grant, Pro Se, Mountain City, Tennessee.

Paul G. Summers, Attorney General & Reporter; Renee W. Turner, Assistant Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

On January 8, 1998 the petitioner entered guilty pleas to facilitation to commit first degree murder and two counts of attempted first degree murder. The trial court imposed an effective sentence of sixty-five years, consisting of forty years for the facilitation and twenty-five years for each attempted murder with one running concurrently to the forty years and one running consecutively to the forty years.

On May 5, 2006, the petitioner filed a writ of habeas corpus in Davidson County Criminal Court alleging that his judgments are facially void because the trial court failed to credit the petitioner with pretrial jail credit. The habeas corpus court summarily dismissed the petitioner's writ of habeas corpus stating because the petitioner filed his petition in the wrong court under Tennessee Code Annotated section 29-21-105, which requires a petition to be filed in the court closest in geographical distance. The petitioner is incarcerated at the Northeast Correctional Complex in Johnson County, Tennessee. Therefore, the habeas corpus court concluded that the petitioner should have filed in another court. In addition, the habeas corpus court stated "that the Petitioner has not advanced a sufficient reason for the Court to review his application." The habeas corpus court did not elaborate on its basis for this conclusion. The petitioner appealed to this Court.

Analysis

The determination of whether to grant habeas corpus relief is a question of law. See McLaney v. Bell, 59 S.W.3d 90, 92 (Tenn. 2001). As such, we will review the habeas corpus court's findings de novo without a presumption of correctness. Id. Moreover, it is the petitioner's burden to demonstrate, by a preponderance of the evidence, "that the sentence is void or that the confinement is illegal." Wyatt v. State, 24 S.W.3d 319, 322 (Tenn. 2000).

Article I, section 15 of the Tennessee Constitution guarantees an accused the right to seek habeas corpus relief. See Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). A writ of habeas corpus is available only when it appears on the face of the judgment or the record that the convicting court was without jurisdiction to convict or sentence the defendant or that the defendant is still imprisoned despite the expiration of his sentence. Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993); Potts v. State, 833 S.W.2d 60, 62 (Tenn. 1992). In other words, habeas corpus relief may be sought only when the judgment is void, not merely voidable. See Taylor, 995 S.W.2d at 83. "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.' We have recognized that a sentence imposed in direct contravention of a statute, for example, is void and illegal." Stephenson v. Carlton, 28 S.W.3d 910, 911 (Tenn. 2000) (quoting Taylor, 955 S.W.2d at 83).

However, if after a review of the habeas petitioner's filings the habeas corpus court determines that the petitioner would not be entitled to relief, then the petition may be summarily dismissed. Tenn. Code Ann. § 29-21-109; State ex rel. Byrd v. Bomar, 381 S.W.2d 280 (Tenn. 1964). Further, a habeas corpus court may summarily dismiss a petition for writ of habeas corpus 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 addressed therein are void. Passarella v. State, 891 S.W.2d 619 (Tenn. Crim. App. 1994), superceded 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 procedural requirements for habeas corpus relief are mandatory and must be scrupulously followed. Hickman v. State, 153 S.W.3d 16, 19-20 (Tenn. 2004); Archer, 851

S.W.2d at 165. For the benefit of individuals such as the petitioner, our legislature has explicitly laid out the formal requirements for a petition for a writ of habeas corpus at Tennessee Code Annotated section 29-21-107:

(a) Application for the writ shall be made by petition, signed either by the party for whose benefit it is intended, or some person on the petitioner's behalf, and verified by affidavit.

(b) The petition shall state:

(1) That the person in whose behalf the writ is sought, is illegally restrained of liberty, and the person by whom and place where restrained, mentioning the name of such person, if known, and, if unknown, describing the person with as much particularity as practicable;

(2) The cause or pretense of such restraint according to the best information of the applicant, and if it be by virtue of any legal process, a copy thereof shall be annexed, or a satisfactory reason given for its absence;

(3) That the legality of the restraint has not already been adjudged upon a prior proceeding of the same character, to the best of the applicant's knowledge and belief; and

(4) That it is the first application for the writ, or, if a previous application has been made, a copy of the petition and proceedings thereon shall be produced, or satisfactory reasons be given for the failure so to do.

“A habeas corpus court may properly choose to dismiss a petition for failing to comply with the statutory procedural requirements.” Hickman, 153 S.W.3d at 21.

The petitioner's writ of habeas corpus does not meet the mandatory statutory requirements. The State argues that the petitioner filed his petition in the wrong court. The petitioner is incarcerated at the Northeast Correctional Complex in Mountain City, Tennessee in Johnson County. He filed his writ in the Davidson County Criminal Court. Under Tennessee Code Annotated section 29-21-105, “[t]he application should be made to the court or judge most convenient in point of distance to the applicant, unless a sufficient reason be given in the petition for not applying to such court or judge.”

The petitioner argues that a sufficient reason to file in Davidson County Criminal Court is, “the convicting court can correct an illegal sentence at any time and is in possession of the records pertaining to the sentence.” However, this Court has repeatedly held that this is not a sufficient reason for filing in a court other than one where the petitioner is located. See e.g. Larry L. Halliburton v. State, No. W2001-00755-CCA-R3-CO, 2002 WL 1558611 (Tenn. Crim. App., at Jackson, Jan. 30, 2002), perm. app. denied, (Tenn. Jul. 1, 2002); Jimmy Wayne Wilson v. State, No. 03C01-9806-CR-00206, 1999 WL 420495 (Tenn. Crim. App., at Knoxville, June

24, 1999), perm. app. denied (Tenn. Nov. 22, 1999); Charles Bryant v. State, No. 03C01-9803-CR-00115, 1999 WL 274849 (Tenn. Crim. App., at Knoxville, May 4, 1999). The petitioner has failed to comply with Tennessee Code Annotated section 29-21-105, and this alone is an adequate basis for the trial court to dismiss his petition. See Clifford W. Rogers v. State, No. W2002-02268-CCA-R3-CO, 2003 Tenn. Crim. App. LEXIS 326 (Tenn. Crim. App., at Jackson, March 25, 2003).

Even if the petitioner had filed his petition in the correct court, he still has not presented an issue that is appropriate for habeas corpus review. The petitioner complains that the trial court did not credit him with pre-trial jail credit on the second and third counts to which he pled guilty. The trial court did credit him for the pre-trial jail credits on the judgment form for the first count to which he pled guilty. In a case very similar to the one sub judice, we stated, “A defendant incarcerated prior to trial who receives consecutive sentences is only allowed pre-trial jail credits to be applied toward the first sentence.” Marvin Rainer v. David G. Mills, No. W2004-02676-CCA-R3-HC, 2006 WL 156990 (Tenn. Crim. App., at Jackson, Jan. 20, 2006) (citing Christopher A. Johnson v. State, No. E2002-01208-CCA-R3-PC, 2003 WL 21145504, at *5 (Tenn. Crim. App., at Knoxville, May 16, 2003), perm. to appeal denied, (Tenn. Oct. 6, 2003)). This Court also stated, “An inmate may not “double-dip” for credits from a period of continuous confinement.” Id. (citing Christopher Johnson v. Tenn. Dept. Of Correction, No. 95-2065-II, 1996 WL 442740 (Tenn. Ct. App. Aug. 7, 1996)). The trial court correctly applied the petitioner’s pre-trial jail credits to the sentence deriving from the first count to which he pled guilty.

Therefore, the habeas corpus court was correct in summarily dismissing the petitioner’s writ of habeas corpus.

Conclusion

Rule 20 of the Rules of the Court of Criminal Appeals provides:

The Court, with the concurrence of all judges participating in the case, when an opinion would have no precedential value, may affirm the judgment or action of the trial court by memorandum opinion rather than by formal opinion, when:

(1)(a) The judgment is rendered or the action taken in a proceeding before the trial judge without a jury, and such judgment or action is not a determination of guilt, and the evidence does not preponderate against the finding of the trial judge,

We determine that this case meets the criteria of the above-quoted rule and, therefore, we grant the State's motion filed under Rule 20, and we affirm the judgment of the habeas corpus court.

JERRY L. SMITH, JUDGE