

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs June 27, 2006

**PATRICK DALE POTTER v. STATE OF TENNESSEE**

**Appeal from the Circuit Court for Blount County  
No. C-15083 D. Kelly Thomas, Jr., Judge**

**No. E2005-01183-CCA-R3-HC - Filed August 22, 2006**

In 1999, the Petitioner, Patrick Dale Potter, pled guilty to one count of rape and received an eight-year sentence, with all but six months suspended. In 2001, the Defendant's probation was revoked, and he was ordered to serve the remainder of his sentence in prison. He filed a petition for a writ of habeas corpus, alleging that the trial court lacked jurisdiction to hear and accept his guilty plea because he was a juvenile when he committed the offense and a proper transfer hearing had not been conducted. After a hearing, the trial court dismissed the petition, and we affirm the judgment of the trial court.

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

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which JOSEPH M. TIPTON and JAMES CURWOOD WITT, JR., JJ., joined.

William Lee Gribble, II, Maryville, Tennessee, for the petitioner, Patrick Dale Potter.

Paul G. Summers, Attorney General and Reporter; John H. Bledsoe, Assistant Attorney General; Michael L. Flynn, District Attorney General; Robert Headrick, Assistant District Attorney General for the Appellee, State of Tennessee.

**OPINION**

**I. Facts and Procedural History**

In 2004, after the Petitioner's probation was revoked, he appealed to this Court, and we recounted the procedural history of this case. In that opinion, we stated:

The record reflects that the [Petitioner] was charged in 1997 with rape of a child and that he pled guilty to rape in February of 1999. Pursuant to the plea agreement, the trial court sentenced him as a Range I, standard offender to eight years to be served as six months in jail and the remainder on supervised

probation. In April 1999, the [Petitioner] also pled guilty to reckless endangerment and setting fire to personal property or land and received two concurrent two-year sentences to be served as six months in jail and the remainder on supervised probation. On March 22, 2001, the [Petitioner's] probation supervisor filed a probation violation warrant, alleging that the [Petitioner] had violated the terms of his probation by being arrested for reckless driving and public intoxication, violating his curfew, smoking marijuana, and being three months behind in paying probation fees. During a hearing, the [Petitioner] admitted to the violations, and the trial court ordered him to serve thirty days on consecutive weekends. Upon completing his weekend confinement, the [Petitioner] was to be released on probation. On October 24, 2001, the [Petitioner's] probation supervisor filed a second probation violation warrant, alleging that the [Petitioner] had failed to serve his weekends in jail, had tested positive for marijuana, had admitted smoking the drug recently, had failed to pay probation fees, and had missed sex offender treatment meetings. The [Petitioner] absconded and remained at large for almost two years.

State v. Patrick Potter, No. E2003-02778-CCA-R3-CD, 2004 WL 225399, at \*1 (Tenn. Crim. App., at Knoxville, Oct. 7, 2004), *no Tenn. R. App. P. 11 application filed*. This Court affirmed the trial court's revocation of the Petitioner's probation and its ordering him to serve the remainder of his sentences in confinement.

On April 29, 2004, the Petitioner filed a petition for writ of habeas corpus, alleging that he was born on July 23, 1979, and that he was less than eighteen years of age in March, 1997, when the offense of rape of a child occurred. Further, the petition asserted that the juvenile court has exclusive jurisdiction over persons under the age of eighteen unless the case is properly transferred. The Petitioner contended that his case was not properly transferred, and the trial court, therefore, had no jurisdiction to hear the proceeding against the Petitioner or to accept his guilty plea. The State countered that the petition had no merit because the Petitioner had waived any procedural defects.

The habeas corpus court held a hearing on the petition at which the following evidence was presented: The parties stipulated that the Petitioner's birthday is July 23, 1979, and that the offense in this case occurred during the month of March of 1997. Further, they stipulated that the Petitioner pled guilty on February 16, 1999, and that the Petitioner's probation was revoked on November 5, 2003. Mack Garner, a public defender, testified that he was appointed to represent the Petitioner on the charge of rape of a child, which occurred in March of 1997. He said that he did not recall the issue of waiver coming up during the proceedings, and, after researching the matter by contacting the juvenile clerk, he discovered that there was no transfer hearing or waiver of transfer hearing in juvenile court.

Garner testified that the Petitioner's plea offer from the State was "one of the best offers [he has] ever seen been given," and he therefore felt it was in the Petitioner's best interest to plead guilty. He said that the evidence against the Petitioner included a voluntary statement made by the Petitioner to an officer that was a full confession and a statement from the victim confirming the Petitioner's statement. Further, there was proof that the victim was of an age that

would support a rape of a child charge, and he said that the law is clear that a mistake or misrepresentation of the victim's age is no defense. Additionally, Garner said that the Petitioner was facing a mandatory incarceration period of at least fifteen years. Therefore, Garner "exerted every possible pressure" he could to get the Petitioner to accept the plea deal.

On cross-examination, Garner said that if there had been a transfer hearing the Petitioner would have been transferred from juvenile court to circuit court, a belief based in part upon the fact that at the time of the plea the Petitioner was almost nineteen years old. On redirect examination, Garner said that the Petitioner called him and asked him to raise in a habeas corpus petition the issue of his age at the time the offense was committed, and Garner warned the Petitioner of the consequences of prevailing on a habeas corpus petition, including the possibility of the reinstatement of the original charges. The Petitioner directed Garner to file the petition, and Garner complied.

The State stipulated that there was no transfer hearing held and that the Petitioner's mother did not receive written notice as required by Tennessee Code Annotated section 37-1-134 (2003).

After the conclusion of the hearing, the habeas corpus court filed a written order in which it found:

Tennessee Code Annotated § 37-1-109 mandates transfer of a defendant who is a child from the adult court to juvenile court. Of course the [P]etitioner was not a child when he appeared after indictment. The [P]etitioner was nineteen (19) years old when indicted. Tennessee Code Annotated § 37-1-134 sets forth the procedure allowing transfer of a juvenile to criminal court to be tried as an adult. The parties agree and the record shows that these statutes were not followed and [the Petitioner] pled to rape without disclosing that he was a juvenile at the time of the offense.

The law in Tennessee appears to be found in two Supreme Court cases State v. Hale 833 SW2d (Tenn. 1992) and State v. Sawyers 814 SW2d 825 (Tenn. 1991). While the facts are somewhat different from the case at bar, the Court held that failing to follow the transfer provisions of the juvenile code does not deprive the circuit court of subject matter jurisdiction if the juvenile was eligible for transfer. The failure of the [P]etitioner to raise the issue prior to his plea of guilty constitutes a waiver of the issue and the petition is dismissed.

It is from this judgment that the Petitioner now appeals.

## **II. Analysis**

On appeal, the Petitioner contends that the judgment of conviction by which he is incarcerated is void because he was not given an opportunity to receive a juvenile transfer hearing, which is a violation of his due process rights. Further, he asserts that his guilty plea was not knowingly entered because any waiver of due process rights must be made on the record.

The State counters that the habeas corpus court properly dismissed the petition because the Petitioner failed to follow the procedural requirements of filing a petition. It claims the issues raised on appeal were not specifically raised in the petition. Further, it asserts that even if the Petitioner's contentions are taken as true, they render the judgment voidable and not void.

Article I, section 15 of the Tennessee Constitution guarantees the right to seek habeas corpus relief. Tennessee Code Annotated sections 29-21-101 *et seq.* codify the applicable procedures for seeking a writ. The determination of whether habeas corpus relief should be granted is a question of law. Hart v. State, 21 S.W.3d 901, 903 (Tenn. 2000). Accordingly, our review is de novo with no presumption of correctness given to the findings of the court below. Id. While there is no statutory time limit in which to file for habeas corpus relief, Tennessee law provides very narrow grounds upon which such relief may be granted. Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999); see McLaney v. Bell, 59 S.W.3d 90, 92 (Tenn. 2001). A habeas corpus petition may be used only: (1) to contest void judgments which are facially invalid because the convicting court was without jurisdiction or authority to sentence a defendant; or (2) when the defendant's sentence has expired. Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993). In the first category, habeas corpus relief may only be sought when the judgment is void, not merely voidable. 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.” Id. (citing Dykes v. Compton, 978 S.W.2d 528, 529 (Tenn. 1998); Archer, 851 S.W.2d at 161-64). By contrast, a voidable judgment “is one which is facially valid and requires the introduction of proof beyond the face of the record or judgment to establish its invalidity.” Id. (citations omitted). The petitioner bears the burden of demonstrating by a preponderance of the evidence that the judgment of conviction is void or that his term of confinement has expired. Passarella v. State, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994).

We first address the State's argument that the Petitioner has waived the issues he brings on appeal by not specifically asserting them in the habeas corpus petition. While the State accurately points out that issues not asserted before the trial court and raised for the first time on appeal may be deemed waived, see Ricks v. State, 882 S.W.2d 387, 393 (Tenn. Crim. App. 1994), our review of the habeas corpus petition reveals that the Petitioner sufficiently included in the petition the issues that he now raises on appeal. The petition clearly asserts that the juvenile court had exclusive jurisdiction over cases in which a child under eighteen commits a crime and that the Petitioner was under eighteen at the time that this offense was committed. Further, the petition articulates that the lack of a transfer hearing “created a situation in which [the trial court] had no jurisdiction to hear the proceeding against the Defendant or accept his guilty plea.” We conclude that these contentions in the petition, along with others, sufficiently comply with the requirements of a habeas corpus petition.

We now turn to address his contention that the trial court lacked jurisdiction to hear or accept his guilty plea. This Court previously addressed this same issue in Eddie F. DePriest v. Meyers, M2000-02312-CCA-R3-PC, 2001 WL 758739 (Tenn. Crim. App., at Nashville, July 6, 2001), *no. Tenn. R. App. P. 11 application filed*. In that case, the petitioner filed a petition for habeas corpus relief alleging that the convicting “circuit court lacked the necessary jurisdiction

to convict him because he was a juvenile when he committed the offense and a proper transfer hearing had not been conducted.” Id. at \*1. Accordingly, he alleged that the circuit court lacked jurisdiction over any of the proceedings that ensued and rendered all other actions against the Petitioner “null and void.” Id. He asserted that the juvenile court had “exclusive jurisdiction” over all criminal proceedings against him and that the law required a transfer hearing to remove jurisdiction from the juvenile court to the circuit court. Id. Further, he argued that without such transfer hearing, the circuit court was deprived of jurisdiction. Id.

Addressing this contention, we stated:

Our [S]upreme [C]ourt has held that the right to a transfer hearing is “sufficiently fundamental to be considered a matter of due process, in the context of juvenile justice.” Sawyers v. State, 814 S.W.2d 725, 729 (Tenn. 1991). The transfer hearing in juvenile court has been likened to a preliminary hearing with regard to the issue of probable cause. State v. Womack, 591 S.W.2d 437, 443 (Tenn. Crim. App. 1979). However, “the absence of a transfer order cannot be said to affect the [criminal] court’s subject matter jurisdiction, which, in a real sense, is concurrent with that of the juvenile court as to certain offenses committed by children falling within a specified age span.” Sawyers, 814 S.W.2d at 729 (citations omitted). The age of a juvenile defendant has been characterized, not as an element of subject matter jurisdiction, but as a fact which entitles the defendant to certain procedural rights. Id. And, the lack of a valid transfer hearing does not deprive a criminal court of jurisdiction, but has been described instead as a “procedural deficiency.” Id.; see also State v. Hale, 833 S.W.2d 65, 67 (Tenn. 1992)

In light of the Tennessee Supreme Court’s decision in Sawyers v. State, 814 S.W.2d 725 (Tenn. 1991), we hold that the absence of a transfer order did not affect the circuit court’s subject matter jurisdiction with regard to convicting Petitioner. We are mindful that in Sawyer, the [S]upreme [C]ourt was faced with factual circumstances similar to those in the instant case, i.e., it was asked to determine whether relief should have been granted to a petitioner who was actually a juvenile at the time of the offense, but who was not afforded a transfer hearing prior to his conviction in criminal court. The [S]upreme [C]ourt granted the petitioner relief in the form of a remand to the trial court for further proceedings to determine whether transfer would have been appropriate. However, the petitioner in Sawyer was appealing a judgment from a post-conviction proceeding which was, significantly, a voidable judgment. By contrast, habeas corpus relief is available only when the judgment contested is void. This is the crucial distinction between the result in Sawyer and our present decision.

Id. at \*1-2. This Court then held:

Here, we have already determined that the absence of a transfer order did not deprive the circuit court of jurisdiction or authority to convict Petitioner. Moreover, Petitioner’s allegations are based on an alleged due process violation,

which is not cognizable in a petition for writ of habeas corpus since it would render the judgment merely voidable, not void. As such, Petitioner's issue would have been more appropriately presented in a petition for post-conviction relief, similarly to the claims of the petitioner in Sawyer.

Id.

In accordance with DePriest, we conclude that the Petitioner in the case under submission is not entitled to habeas corpus relief. The absence of the transfer order in this case did not deprive the trial court of jurisdiction or authority to hear and accept the Petitioner's guilty plea. Further, his due process allegations would render his judgment voidable and not void. As stated in DePriest, the Petitioner's contentions would have been more appropriately presented in a petition for post-conviction relief. Further, Tennessee Code Annotated section 40-30-102(a) (2003) provides that a petition for post-conviction relief must be filed within one year from final judgment. The Petitioner in this case pled guilty on February 16, 1999. Thus, the statute of limitations period for post-conviction relief has expired. The Petitioner is not entitled to relief on this issue.

### **III. Conclusion**

In accordance with the foregoing reasoning and authorities, we affirm the judgment of the trial court.

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ROBERT W. WEDEMEYER, JUDGE