

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

DONOVAN DAVIS v. STATE OF TENNESSEE

**Direct Appeal from the Criminal Court for Davidson County
No. 97-B-867 Steve Dozier, Judge**

No. M2007-00409-CCA-R3-HC - Filed August 15, 2007

Petitioner, Donovan Davis, filed a Petition for Writ of Habeas Corpus attacking his 1998 convictions for facilitation of felony murder and aggravated robbery, for which he received consecutive sentences for a total effective sentence of thirty (30) years. The trial court summarily dismissed the petition without an evidentiary hearing. Petitioner has appealed, arguing that (1) the sentences were imposed in direct violation of his constitutional rights to have a jury determine sentencing enhancement factors, and (2) the habeas corpus trial court erroneously relied upon Petitioner's waiver of appeal of his convictions and sentencing. The State has filed a motion to affirm pursuant to Rule 20 of the Rules of the Tennessee Court of Criminal Appeals. Finding the motion to be well-taken, it is hereby granted. Accordingly, the judgment of the trial court is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court for Davidson
County Affirmed Pursuant to Rule 20 of the Tennessee Court of Criminal Appeals**

THOMAS T. WOODALL, J., delivered the opinion of the court, in which DAVID H. WELLES and ROBERT W. WEDEMEYER, JJ., joined.

Donovan Davis, Whiteville, Tennessee, *pro se*.

Robert E. Cooper, Jr., Attorney General and Reporter; Preston Shipp, Assistant Attorney General; Victor S. (Torry) Johnson III, District Attorney General; and Pamela Sue Anderson, Assistant District Attorney General, for the appellee, the State of Tennessee.

MEMORANDUM OPINION

Defendant was convicted following a jury trial wherein he was originally charged with felony murder, aggravated robbery, and premeditated first degree murder. The jury found Defendant guilty of aggravated robbery, facilitation of felony murder, and facilitation of second degree murder. The facilitation of second degree murder conviction was merged with the facilitation of felony murder conviction. Defendant was sentenced to serve ten (10) years for

aggravated robbery and twenty (20) years for facilitation of felony murder, and his sentences were ordered to be served consecutively with each other.

Petitioner asserts that he was sentenced above the minimum sentence in violation of *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L.Ed.2d 403 (2004). Since we conclude that a *Blakely* challenge is not cognizable in a habeas corpus proceeding, we do not have to address Petitioner's issue that the trial court erred by relying upon his waiver of appeal in the original trial proceedings. In other words, it was not necessary for the habeas corpus court to rely upon the waiver.

This Court has previously held in a habeas corpus case that a *Blakely* violation at the time of conviction and sentencing would render the judgment voidable, and not void, unless the face of the record established that the trial court did not have jurisdiction to convict or sentence the defendant. *Timothy R. Bowles v. State*, No. M2006-01685-CCA-R3-HC, 2007 WL 1266594, at *2 (Tenn. Crim. App., at Nashville, May 1, 2007) *no perm. app. filed*. Generally, a trial court has jurisdiction to sentence the defendant within the range provided by law following a conviction in a jury trial. T.C.A. § 40-35-203(a). If the sentence imposed was the result of enhancing factors not found by a jury, the length of the sentence may be erroneous, but the trial court still has jurisdiction to impose the sentence within the appropriate range. Arguably, a *Blakely* constitutional violation could be harmless error beyond a reasonable doubt, specifically in the situation where the use of prior convictions (which do not have to be found by a jury, *Blakely*, 542 U.S. at 303) are used to enhance a sentence. Accordingly, Petitioner is not entitled to habeas corpus relief since the judgment attacked is not void. *Passarella v. State*, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994).

Accordingly, the motion of the State to affirm should be granted.

CONCLUSION

The judgment rendered by the habeas corpus court was in a proceeding before the trial court without a jury, it was not a determination of guilt, and the evidence in the record does not preponderate against the finding of the trial court. No error of law requiring a reversal of the judgment is apparent on the record. Accordingly, the judgment is affirmed pursuant to Rule 20, Rules of the Tennessee Court of Criminal Appeals.

THOMAS T. WOODALL, JUDGE