

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs October 30, 2007

BRONZO GOSNELL v. HOWARD CARLTON, WARDEN

**Appeal from the Criminal Court for Johnson County
No. 5044 Lynn Brown, Judge**

No. E2007-01569-CCA-R3-HC - Filed December 19, 2007

The pro se petitioner, Bronzo Gosnell, appeals the Johnson County Criminal Court's summary dismissal of his petition for a writ of habeas corpus. The petitioner was convicted by a Greene County jury of second degree murder and sentenced to twenty-five years. He alleges that he is entitled to habeas corpus relief because his sentence was imposed in contravention to the United States Supreme Court's holding in Blakely v. Washington, 524 U.S. 296, 124 S. Ct. 2531 (2004). The trial court summarily dismissed the petition for failure to state a cognizable claim. Following our review, we affirm the judgment of the trial court.

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

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which DAVID H. WELLES and DAVID G. HAYES, JJ., joined.

Bronzo Gosnell, Mountain City, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General & Reporter; and Cameron L. Hyder, Assistant Attorney General, attorneys for appellee, State of Tennessee.

OPINION

This court affirmed the petitioner's convictions on direct appeal. State v. Gosnell, 62 S.W.3d 740 (Tenn. Crim. App. 2001). The petitioner later filed an untimely petition for post-conviction relief that was summarily dismissed by the trial court. This court affirmed the dismissal on appeal. Bronzo Gosnell v. State, No. E2004-026540-CCA-R3-PC, 2005 WL 1996629 (Tenn. Crim. App. Aug. 19, 2005). Now the petitioner asserts that he is entitled to habeas corpus relief because, he alleges, his sentence was imposed in contravention to Blakely. The habeas corpus court summarily dismissed the petition for writ of habeas corpus based upon its finding that the petitioner's claim was not cognizable in a habeas corpus proceeding. On

appeal, the petitioner asserts that the summary dismissal was erroneous and that the trial court should have declared him indigent and appointed counsel. The state counters that the petitioner is not entitled to habeas corpus relief because the petitioner's claim, even if taken as true, would render the judgment merely voidable and not void.

ANALYSIS

Tennessee law provides that “[a]ny person imprisoned or restrained of his liberty under any pretense whatsoever . . . may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment.” Tenn. Code Ann. § 29-21-101. Habeas corpus relief is limited and available only when it appears on the face of the judgment or the record of proceedings below that a trial court was without jurisdiction to convict the petitioner or that the petitioner's sentence has expired. Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993). To prevail on a petition for a writ of habeas corpus, a petitioner must establish by a preponderance of the evidence that a judgment is void or that a term of imprisonment has expired. See State ex rel. Kuntz v. Bomar, 214 Tenn. 500, 504, 381 S.W.2d 290, 291-92 (1964). If a petition fails to state a cognizable claim, it may be dismissed summarily by the trial court without further inquiry. See State ex rel. Byrd v. Bomar, 214 Tenn. 476, 483, 381 S.W.2d 280, 283 (1964); Tenn. Code Ann. § 29-21-109. We note that the determination of whether to grant habeas corpus relief is a matter of law; therefore, we will review the trial court's finding de novo without a presumption of correctness. McLaney v. Bell, 59 S.W.3d 90, 92 (Tenn. 2001).

We agree with the state's assertion that the petitioner's claim would render the judgment of conviction merely voidable, not void, and therefore is not cognizable in a habeas corpus proceeding. See Billy Merle Meeks v. Ricky J. Bell, Warden, 2007 WL 4116486, No. M2005-00626-CCA-R3-HC, at *12 (Tenn. Crim. App. Nov. 13, 2007). As previously stated, the trial court may summarily dismiss a petition for a writ of habeas corpus without further inquiry when the petition fails to state a cognizable claim. Therefore, it was unnecessary for the trial court to determine the petitioner's indigence or give consideration to the appointment of counsel.

CONCLUSION

Upon thorough review, we conclude that the trial court correctly dismissed the petition for a writ of habeas corpus. The judgment of the trial court is affirmed.

D. KELLY THOMAS, JR., JUDGE