

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs August 21, 2007

EDWARD ALLEN HUDSON v. STATE OF TENNESSEE

Direct Appeal from the Criminal Court for Sullivan County

No. C51,634 R. Jerry Beck, Judge

No. E2006-00643-CCA-R3-HC - Filed November 28, 2007

Petitioner, Edward Allen Hudson, appeals the trial court's summary dismissal of his petition for habeas corpus relief attacking his conviction for rape of a child. Upon review of the record and the parties' briefs, we affirm the judgment of the trial court as to all issues not pertaining to Petitioner's sentence. The trial court recognized that Petitioner's sentence was improper and ordered that the Tennessee Department of Correction (TDOC) be notified; however, the court did not enter an amended judgment. We conclude, as to Petitioner's sentence, that habeas corpus relief from the illegal sentence should be granted. We remand this cause to the Sullivan County Criminal Court for entry of an amended judgment consistent with this opinion.

**Tenn. R. App. P. 3 Appeal as of Right;
Judgment of the Criminal Court Affirmed in Part; Reversed in Part**

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

Edward Allen Hudson, Mountain City, Tennessee, *pro se*.

Robert E. Cooper, Jr., Attorney General and Reporter; Elizabeth B. Marney, Assistant Attorney General; H. Greeley Wells, Jr., District Attorney General; and Barry P. Staubus, Assistant District Attorney General, for the appellee, the State of Tennessee.

OPINION

I. Background

Following a 1995 jury trial in Sullivan County Criminal Court, Petitioner was convicted of rape of a child. The offense occurred on December 12, 1994. The trial court sentenced Petitioner to twenty years as a standard, Range I offender, with a release eligibility date (RED) of 30 percent. On direct appeal, this Court affirmed the conviction but modified the sentence from

twenty years to sixteen years. An amended judgment was entered in June 1998, reflecting a sixteen year sentence with a RED of 30 percent. However, Tennessee Code Annotated section 39-13-523(2)(d) mandated that, as a child rapist, Petitioner must serve his entire sentence. Upon motion of the state in March 1999, the judgment was amended to show Petitioner had a 100 percent rather than a 30 percent RED.

In 2001, Petitioner filed a petition for post-conviction relief. Citing Tennessee Code Annotated section 40-35-501 (i)(2)(1), the post-conviction court determined that the initial corrected judgment was incorrect because the “100% service provisions for rape of a child [in T.C.A. § 40-35-501] did not become effective until after July 1, 1995, after the date of the offense.” The post-conviction court then granted relief and ordered that a second corrected judgment be entered reflecting a sixteen year sentence with a RED of 30 percent.

Petitioner’s post-conviction counsel received a letter from the Tennessee Department of Correction in August, 2004 regarding Petitioner’s sentence. TDOC stated that, although it calculated Petitioner’s sentence at 30 percent RED, under section 39-13-523, “a child rapist shall be required to served the entire sentence imposed by the court” In March of 2005, Petitioner filed his first petition for writ of habeas corpus in the Criminal Court for Johnson County. Petitioner claimed that his sentence was illegal because his RED should have been set at 100 percent. The Johnson County court concluded that Petitioner was correct but also concluded it was without jurisdiction to amend the judgment and therefore denied relief. The court also advised Petitioner to file a petition in Sullivan County and ask that the illegal sentence be corrected.

On January 18, 2006, Petitioner filed the instant petition for writ of habeas corpus in Sullivan County Criminal Court. Petitioner now claims that his sentence was illegal because TDOC was continuing to calculate his sentence at 100 percent despite the December 2001 order. Petitioner argued that TDOC does not have the authority to “change” the corrected judgment. On March 6, 2006, the Sullivan County court summarily denied relief, determining that TDOC was correct in its calculation. In denying relief the criminal court stated:

The petitioner says that the Court’s order arising out of the post conviction action providing for a 30% RED is applicable to him and that the Department of Corrections/Parole Board will not release him.

This Court finds that TCA 39-13-523 would prohibit them releasing him for his offenses committed on December 12, 1994 because the effective date of TCA 39-13-523 was July 1, 1992.

The Department of Corrections will be notified of this finding and judgment. Any reference this Court made in the post conviction order in regard to a 30% RED should not be construed to apply to a sentence involving the rape of a child under TCA 39-13-523.

The post conviction order was only directed to TCA 40-35-501 (i)(2)(1) and the 30% RED contained in the post conviction order was in error. The petitioner has no right to parole under TCA 39-13-523 (effective July 1, 1992).

The Department of Corrections/Parole Board is acting correctly denying parole or release.

The Petitioner filed a timely notice of appeal.

II. Analysis

The Petitioner and the State agree that Petitioner's sentence is illegal. The Petitioner asks us to grant relief in the form of a new trial and release on recognizance or bail pending that trial or immediate release from prison due to the illegal sentence and expungement of the crime from his record. The State asks us to grant relief by vacating Petitioner's sentence and remanding the matter to the court of conviction for entry of a corrected judgment setting forth his conviction for rape of a child and sentencing him to sixteen years to be served at 100 percent with no provision for early release eligibility.

In Tennessee, persons imprisoned or restrained of their liberty may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment and restraint." *Church v. State*, 987 S.W.2d 855, 857 (Tenn. Crim. App. 1998); *see Faulkner v. State*, 226 S.W.3d 358 (Tenn. 2007); *see also* T.C.A. § 29-21-101 *et seq.* However, the grounds upon which a writ of habeas corpus may be issued are very narrow. *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 of the proceedings upon which the judgment was rendered that a court was without jurisdiction to convict or sentence the petitioner or that the petitioner 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). The purpose of a habeas corpus petition is to contest void and not merely voidable judgments. *Archer*, 851 S.W.2d at 163. A void judgment is a facially invalid judgment, clearly showing that a court did not have statutory authority to render such judgment; whereas, a voidable judgment is facially valid, requiring proof beyond the face of the judgment to establish its invalidity. *See Taylor*, 995 S.W.2d at 83. The burden is on the petitioner to establish, 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).

In the instant case, Petitioner has shown, and the state has conceded, that the sentence is void. The corrected judgment entered in December 2001 was in direct contradiction to Tennessee Code Annotated section 39-13-523. The issue then becomes what relief is appropriate.

In *Smith v. Lewis*, 202 S.W.3d 124 (Tenn. 2006), our Supreme Court held that an illegality affecting only the sentence renders just the sentence void and leaves the conviction intact. Habeas corpus relief, therefore, may be granted as to the sentence alone. *Lewis*, 202 S.W.3d at 130. In Petitioner's case, a jury convicted him of rape of a child. The sentence most recently imposed by the trial court erroneously listed a 30 percent RED. The error creating the

illegality at issue, however, affects only Petitioner's sentence. It does not affect the jury's verdict and Petitioner's conviction.

Petitioner's writ also raises the issues of conflict of interest, competence of Petitioner at the time he gave a statement to police, defective jury instructions, ineffective assistance of counsel, *Brady* violations, equal protection and due process violations, and the constitutionality of Tennessee Code Annotated section 40-35-501(i). We agree, however, with the trial court and conclude that Petitioner has not established a cognizable claim for habeas corpus relief as to any of these issues. Each of Petitioner's claims, if true, would render his convictions, at most, voidable since determination of the issues would go beyond the face of the judgment. As noted by the trial court, the matters raised are proper for a petition for post-conviction relief. Where proper, a trial court may convert a petition for habeas corpus relief to one for post-conviction relief. T.C.A. § 40-30-205(c). Even if the trial court attempted to convert the petition for habeas corpus relief to one for post-conviction relief, as authorized by statute, the claim would have to be dismissed as time barred. *See* T.C.A. § 40-30-102; *Archer v. State*, 851 S.W.2d at 164. Accordingly, the trial court properly dismissed the petition. Petitioner is not entitled to habeas corpus relief as to the above issues.

CONCLUSION

For the foregoing reasons, the trial court's judgment is affirmed as to the issues other than the illegal sentence. Petitioner's illegal sentence is vacated and remanded to the Criminal Court of Sullivan County for an entry of an amended judgment which correctly reflects Petitioner's sentence as a child rapist at 100 percent.

THOMAS T. WOODALL, JUDGE