

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs August 21, 2007

OMOWALE A. SHABAZZ v. JIM WORTHINGTON, Warden

**Direct Appeal from the Criminal Court for Morgan County
No. 9263 E. Eugene Eblen, Judge**

No. E2007-00634-CCA-R3-HC - Filed October 15, 2007

In 1995, a Sullivan County jury convicted the Petitioner, Omowale A. Shabazz, of second degree murder and attempted second degree murder and the trial court sentenced him to consecutive thirty and fifteen year sentences. The conviction for attempted second degree murder and its fifteen year sentence were subsequently vacated in a post-conviction proceeding. The Petitioner filed a pro se petition and “supplemental petition” for writ of habeas corpus, which the habeas court dismissed without a hearing. On appeal, the Petitioner argues that (1) the trial court erred by dismissing his petition for writ of habeas corpus for failure to attach the appropriate judgments; (2) the prosecutor abused his discretion by bringing charges for first degree murder and attempted first degree murder when the Petitioner was bound over from the General Sessions Court for second degree murder and attempted second degree murder; and (3) the Tennessee courts have misconstrued and misapplied Tennessee Code Annotated section 29-21-101 and exceeded their judiciary power by interpreting the statute too narrowly. Finding no error, we affirm the judgment of the habeas corpus court.

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

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

Omowale A. Shabazz, Petros, Tennessee, pro se.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; Cameron L. Hyder and John H. Bledsoe, Assistant Attorneys General, for the Appellee, State of Tennessee.

OPINION

I. Facts

The Sullivan County grand jury charged the Petitioner, Fred Edmond Dean a/k/a Omowale A. Shabazz, by presentment with one count each of first degree murder and attempted first degree murder; a Sullivan County jury convicted the Petitioner of second degree murder and attempted second degree murder, and the trial court sentenced him to consecutive thirty and fifteen year sentences, respectively. The convictions and sentences were affirmed on direct appeal. *See State v. Fred Edmond Dean*, No. 03C01-9508-CC-00251, 1997 WL 7550 (Tenn. Crim. App., at Knoxville, Jan. 10, 1997), *perm. app. denied* (Tenn. Sept. 2, 1997). The Petitioner's post-conviction petition was also denied after an evidentiary hearing, but this Court vacated the conviction for attempted second degree murder and the Tennessee Supreme Court affirmed that decision. *See Fred Edmond Dean v. State*, No. E1998-00135-CCA-R3-PC, 2000 WL 337552 (Tenn. Crim. App., at Knoxville, Mar. 21, 2000), *perm. app. denied* (Tenn. Nov. 13, 2000); *Dean v. State*, 59 S.W.3d 663 (Tenn. 2001).

The Petitioner filed a petition and a "supplemental petition" for a writ of habeas corpus, arguing that the prosecutor abused his discretion by presenting to the grand jury first degree murder and attempted first degree murder charges against the Petitioner after the General Sessions Court bound him over on charges of second degree murder and attempted second degree murder. The Petitioner claimed that, because of that error, the trial court lacked subject matter jurisdiction over him, and he was "severely prejudiced." The habeas corpus court dismissed the petition and "supplemental petition" without a hearing. The Petitioner subsequently filed a timely notice of appeal.

II. Analysis

The Petitioner contends that the habeas corpus court erred when it dismissed his petition, as supplemented, because (1) the trial court erred by dismissing his petition for writ of habeas corpus for failure to attach the appropriate judgments; (2) the prosecutor abused his discretion by bringing charges for first degree murder and attempted first degree murder when the Petitioner was bound over from the General Sessions Court for second degree murder and attempted second degree murder; and (3) the Tennessee courts have misconstrued and misapplied Tennessee Code Annotated section 29-21-101 and exceeded their judiciary power by interpreting the statute too narrowly.

The right to seek habeas corpus relief is guaranteed by article I, section 15 of the Tennessee Constitution and governed by statute. *See* T.C.A. § 29-21-101 (2006) *et seq.* The determination of whether habeas corpus relief should be granted is a question of law and is accordingly reviewed de novo. *Hart v. State*, 21 S.W.3d 901, 903 (Tenn. 2000). Although there are no statutory limits preventing a habeas corpus petition, the grounds upon which relief may be granted are very narrow. *Taylor v. State*, 995 S.W.2d 78, 83 (Tenn. 1999). The petitioner bears the burden of demonstrating 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 other words, the very narrow grounds for granting habeas corpus relief are (1) the judgment was facially invalid and therefore, void because the convicting court was without jurisdiction or authority to sentence the defendant, or (2) the petitioner's sentence has expired. *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993). In 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," and it does not entitle the petitioner to relief. *Taylor*, 995 S.W.2d at 83; *see State v. Richie*, 20 S.W.3d 624, 633 (Tenn. 2000).

A. Judgments

The Petitioner argues that his petition, as supplemented, was improperly dismissed because he failed to attach the appropriate judgments. While the right to petition for writ of habeas corpus is guaranteed by article I, section 15 of Tennessee Constitution, the procedure for petitioning is statutory and found in part at Tennessee Code Annotated section 29-21-107. One of the statutory requirements for a petitioner to properly petition for a writ of habeas corpus is to annex a copy of the judgment. T.C.A. § 29-21-107(b)(2) (2006). Without a copy of the judgment, the habeas court cannot review the judgment for voidness. Moreover, the Tennessee Supreme Court stressed the importance of the petitioner including all required documents when it held that "without question, the procedural provisions of the habeas corpus statutes are mandatory and must be followed scrupulously." *Archer*, 851 S.W.2d at 165. In this case, the Petitioner did not include a copy of his judgment from Sullivan County for second degree murder, but rather, he included computerized printouts from Tennessee Offender Management Information System (TOMIS). While we recognize that the Petitioner included the documents provided to him by the Brushy Mountain Correctional Complex personnel, he failed to meet the "scrupulous" standard. Because this Court does not have a copy of the Petitioner's judgment to properly determine if the judgment was void on its face, we cannot grant habeas corpus relief on this issue.

B. Abuse of Prosecutorial Discretion

The Petitioner argues that the prosecutor abused his discretion by bringing a presentment against the Petitioner for first degree murder and attempted first degree murder while the Petitioner was bound over from the General Sessions Court on charges of second degree murder and attempted second degree murder. The record before us contains no evidence regarding these allegations. Further, any pursuit of these allegations by the Petitioner would necessarily require proof beyond the face of the judgment. As such, the Petitioner is not entitled to habeas corpus relief on this issue.

C. Interpretation of Tennessee Code Annotated section 29-21-101

The Petitioner argues that the Tennessee courts have misconstrued Tennessee Code Annotated section 29-21-101 and that the narrow reading adopted violates the Constitutional guarantees of separation of powers. The statute at issue reads, "Any person imprisoned or restrained of liberty, under any pretense whatsoever, except in cases specified in [Tenn. Code Ann.] § 29-21-102, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment and restraint." The Petitioner contends that the language "under any pretense whatsoever" should be read broadly and relief of a writ of habeas corpus should be available

under more circumstances than just void judgments or expired sentences. Because the Tennessee Supreme Court has interpreted Tennessee Code Annotated section 29-21-101 to mean the writ of habeas corpus is available only to attack a void judgment or an expired sentence, this court is bound by that decision. *See Archer*, 851 S.W.2d at 164. As a result, the Petitioner is not entitled to relief based on this issue.

III. Conclusion

Based on the foregoing reasoning and authorities, we affirm the judgment of the habeas court.

ROBERT W. WEDEMEYER, JUDGE