

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs August 21, 2007

JAMES SWIGGETT v. HOWARD CARLTON, WARDEN

**Appeal from the Criminal Court for Johnson County
No. 4974 Robert E. Cupp, Judge**

No. E2007-00418-CCA-R3-HC - Filed October 23, 2007

The Petitioner, James Swiggett, appeals the summary dismissal of his petition for the writ of habeas corpus. Swiggett is currently serving a sentence of life imprisonment as a result of his conviction for first degree murder. On appeal, he argues that the trial court erred in concluding that his petition failed to state a colorable claim for habeas corpus relief. After review, we affirm the judgment of the Johnson County Criminal Court dismissing the petition.

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

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

James E. Swiggett, *Pro se*, Mountain City, Tennessee.

Robert E. Cooper, Jr., Attorney General and Reporter; and Leslie E. Price, Assistant Attorney General, for the Appellee, State of Tennessee.

OPINION

Factual Background

The Petitioner is currently an inmate at the Northeast Correctional Complex in Mountain City, where he is serving a life sentence stemming from his first degree murder conviction in Greene County. In January 1992, the Petitioner and two co-defendants were tried for first degree murder, and the proof at trial established that on the morning of March 6, 1989, the Petitioner went to the victim's place of business, pulled out a pistol, and shot the victim twice. *State v. James (Jim) Swiggett*, No. 03C-01-9209-CR-00312 (Tenn. Crim. App. at Knoxville, Nov. 23, 1994), *perm. to appeal denied, concurring in results only*, (Tenn. Mar. 27, 1995). The jury

convicted the Petitioner of first degree murder; however, the two co-defendants were acquitted of all charges. *Id.* The State's theory of prosecution at trial was that the Petitioner's two co-defendants had hired him to murder the victim. The Petitioner's first degree murder conviction was affirmed on direct appeal. *Id.* Moreover, this case has been the subject of extensive appellate litigation, with the instant petition being the Petitioner's third petition for habeas corpus relief. See *James E. Swiggett v. Howard Carlton, Warden*, No. E2006-00049-CCA-R3-HC (Tenn. Crim. App. at Knoxville, Oct. 24, 2006); *James E. Swiggett v. Howard Carlton, Warden*, No. E2003-02212-CCA-R3-PC (Tenn. Crim. App. at Knoxville, Feb. 10, 2004), *perm. to appeal denied*, (Tenn. May 10, 2004). Additionally, the Petitioner has pursued post-conviction relief without avail. See *James E. Swiggett v. State*, No. E2002-00174-CCA-R3-PC (Tenn. Crim. App. at Knoxville, Oct. 15, 2002), *perm. to appeal denied*, (Tenn. Feb. 3, 2003); *James E. Swiggett v. State*, No. 03C01-9804-CR-00161 (Tenn. Crim. App. at Knoxville, May 4, 1999), *perm. to appeal denied*, (Tenn. Nov. 9, 1999).

On November 3, 2006, the Petitioner filed the instant petition for the writ of habeas corpus in the Johnson County Criminal Court, alleging that his conviction was void because it violated the "rule of consistency." In response, the State filed a motion to dismiss the petition, alleging that the Petitioner failed to state a colorable claim for habeas corpus relief. The Petitioner's petition was denied by order of the trial court on January 25, 2007.

Analysis

The Petitioner contends on appeal that his petition for the writ of habeas corpus was erroneously dismissed by the trial court. He asserts that the question facing this court is "[w]hether, under the 'rule of consistency', the [Petitioner] suffered a serious violation of his rights under the 4th, 5th, 6th, 8th or 14th Amendments to the Constitution of the United States of America by an inconsistent verdict[.]" The Petitioner submits that the State's sole theory of prosecution was that his two co-defendants hired him to commit a murder and that, because the co-defendants were acquitted of first degree murder, "[t]he inconsistent verdicts renders [sic] his conviction and subsequent judgments void from the record of the proceedings against him." Without any discussion of their holdings, the Petitioner cites two United States Supreme Court decisions, *Morrison v. California*, 291 U.S. 82, 54 S. Ct. 281 (1934), and *Hartzell v. United States*, 322 U.S. 680, 64 S. Ct. 1233 (1944), in sole support of his position that his conviction for first degree murder is void. Conversely, the State argues that the Petitioner has failed to state a colorable claim for habeas corpus relief, because the "rule of consistency" in verdicts is more aptly applied in cases involving conspiracy.

A petition for habeas corpus relief may only be granted when the judgment is shown to be void, rather than merely voidable. *Taylor v. State*, 995 S.W.2d 78, 83 (Tenn. 1999). A judgment is void only when it appears upon the face of the judgment or the record of the proceedings upon which the judgment is rendered that the convicting court was without jurisdiction or authority to sentence a defendant or that a defendant's sentence has expired. *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993).

The Petitioner's argument as to seemingly inconsistent verdicts is clearly misplaced. In *Morrison*, a case upon which the Petitioner relies, the United States Supreme Court reversed the conspiracy conviction of two defendants for violating the Alien Land Law of California. 291 U.S. at 97, 54 S. Ct. at 287. The only aspect of the Court's holding in *Morrison* that could conceivably