

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs April 22, 2008

**ANITA C. NORRIS v. STATE OF TENNESSEE**

**Appeal from the Circuit Court for Rutherford County  
No. F35291 James K. Clayton, Jr., Judge**

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**No. M2007-02119-CCA-R3-HC - Filed June 25, 2008**

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The petitioner, Anita C. Norris, appeals the dismissal of her petition for writ of habeas corpus. In this appeal, she contends that she is entitled to habeas relief because her sentence expired prior to the trial court's order revoking her probation and ordering service of her original eight-year sentence in the Department of Correction. The judgment of the habeas corpus court dismissing the petition is affirmed. Because of a clerical error in the judgment, we order the trial court to correct the judgment form in this case to indicate that the petitioner was convicted of a Class B felony rather than a Class A felony.

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

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which DAVID H. WELLES and ROBERT W. WEDEMEYER, JJ., joined.

Barry R. Tidwell, Murfreesboro, Tennessee, for the appellant, Anita C. Norris.

Robert E. Cooper, Jr., Attorney General and Reporter; David H. Findley, Assistant Attorney General; William C. Whitesell, Jr., District Attorney General; and Trevor Lynch, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

In March 1996, a Rutherford County jury convicted the petitioner of a single count of possession with intent to sell or deliver cocaine, and on March 22, 1996, the trial court imposed a sentence of eight years to be served as 90 days' incarceration followed by probation. On February 22, 1999, a probation violation warrant issued alleging that the petitioner had violated the terms of her probation by failing to report a subsequent arrest for possession of cocaine and for possessing cocaine at the time of her arrest on December 17, 1998. On December 13, 1999, the trial court entered an order revoking the petitioner's probation and requiring her to serve another 90 days' incarceration and to be "placed back on probation for 8 years."

A second probation violation warrant issued on August 27, 2003, alleging that the petitioner violated the terms of her probation by being arrested for theft. On December 19, 2003, the trial court again revoked the petitioner's probation but nevertheless ordered that she be returned to probation "for [the] balance of [her] sentence."

A third probation violation warrant issued on June 12, 2006, alleging that the petitioner violated the terms of her probation by being arrested on two separate occasions within a five day period and by failing to pay court costs and fees related to the 2003 revocation. On July 6, 2007, the trial court revoked the petitioner's probation and ordered that she serve the entire eight-year sentence in confinement minus 180 days jail credit. The petitioner did not appeal from the trial court's order, but on August 7, 2007, she filed a petition for writ of habeas corpus alleging that the trial court was without jurisdiction to order service of the eight-year sentence because the sentence had previously expired.

At a hearing on August 20, 2007, the trial court allowed both the petitioner and the State to argue the merits of the petition for writ of habeas corpus. At that proceeding, the petitioner indicated that the taking of testimony was unnecessary because she would be relying entirely on the record to support her claim that her sentence had expired. At the conclusion of the proceeding, the trial court ruled that it "had the authority to place her on eight years['] probation" in 1999, and that, as a result, her sentence had not yet expired at the time the probation violation warrant was filed in 2006. In a written order filed the following day, the trial court denied the petition for writ of habeas corpus concluding, "The trial court reinstated the petitioner's original sentence of eight (8) years by way of a violation of probation [on December 13, 1999]. By reinstating the original sentence of eight (8) years the petitioner[s] probation would not have expired until December 12, 2007."

In this appeal, the petitioner asserts that the trial court erred by dismissing her petition for writ of habeas corpus. She contends that because the trial court was without authority to reinstate her eight-year probationary term following the 1999 revocation, her sentence expired on either March 22, 2004, or March 22, 2006. The petitioner argues that, using either date, her sentence expired prior to the filing of the June 2006 revocation warrant. The State submits that because the petitioner failed to attach to her petition the transcript of the 1999 revocation hearing, summary dismissal was appropriate. The State also contends that this court should deem the petitioner's issue waived based upon her failure to include the transcript of the 1999 hearing in the appellate record. In the alternative, the State asserts that the trial court was authorized to reinstate the eight-year probationary term after the 1999 revocation and that, as a result, the petitioner's sentence was in full effect at the time of the June 2006 probation violation warrant.

### *I. Dismissal of Habeas Corpus Relief*

Initially, because the appellate record is otherwise sufficient for review of the merits of the petitioner's claim for habeas corpus relief, we will not treat the issue as waived because the

petitioner failed to include a transcript of the 1999 revocation hearing.<sup>1</sup> In consequence, we will address the issue raised by the petitioner on appeal.

“The determination of whether habeas corpus relief should be granted is a question of law.” *Faulkner v. State*, 226 S.W.3d 358, 361 (Tenn. 2007) (citing *Hart v. State*, 21 S.W.3d 901, 903 (Tenn. 2000)). Our review of the habeas corpus court’s decision is, therefore, “de novo with no presumption of correctness afforded to the [habeas corpus] court.” *Id.* (citing *Killingsworth v. Ted Russell Ford, Inc.*, 205 S.W.3d 406, 408 (Tenn. 2006)).

The writ of habeas corpus is constitutionally guaranteed, *see* U.S. Const. art. 1, § 9, cl. 2; Tenn. Const. art. I, § 15, but has been regulated by statute for more than a century, *see Ussery v. Avery*, 432 S.W.2d 656, 657 (Tenn. 1968). Tennessee Code Annotated section 29-21-101 provides that “[a]ny person imprisoned or restrained of liberty, under any pretense whatsoever, except in cases specified in § 29-21-102, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment and restraint.” T.C.A. § 29-21-101 (2000). Despite the broad wording of the statute, a writ of habeas corpus may be granted only when the petitioner has established a lack of jurisdiction for the order of confinement or that he is otherwise entitled to immediate release because of the expiration of his sentence. *See Ussery*, 432 S.W.2d at 658; *State v. Galloway*, 45 Tenn. (5 Cold.) 326 (1868). The purpose of the state habeas corpus petition is to contest a void, not merely a voidable, judgment. *State ex rel. Newsom v. Henderson*, 424 S.W.2d 186, 189 (Tenn. 1968). A void conviction is one which strikes at the jurisdictional integrity of the trial court. *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993); *see State ex rel. Anglin v. Mitchell*, 575 S.W.2d 284, 287 (Tenn. 1979); *Passarella v. State*, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994). Because in the petitioner’s case the trial court apparently had jurisdiction over the *actus reus*, the subject matter, and the person of the petitioner, the petitioner’s jurisdictional issues are limited to the claims that the court was without authority to enter the judgments. *See Anglin*, 575 S.W.2d at 287 (“‘Jurisdiction’ in the sense here used, is not limited to jurisdiction of the person or of the subject matter but also includes lawful authority of the court to render the particular order or judgment whereby the petitioner has been imprisoned.”); *see also Archer*, 851 S.W.2d at 164; *Passarella*, 891 S.W.2d at 627.

Despite the petitioner’s arguments to the contrary, the trial court was well within its authority to restart the petitioner’s probation following the 1999 revocation and the subsequent revocations for that matter. Our supreme court has held:

The time a defendant spends on probation is not counted toward the completion of his or her sentence unless a defendant successfully completes the entire term of probation. If a defendant violates the terms of his or her probation within the maximum time ordered by the

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<sup>1</sup>In this case, the petitioner attached to her petition for writ of habeas corpus her original judgment as well as the three probation violation warrants and accompanying revocation orders filed in 1999, 2003, and 2006.

trial court, the court can revoke the probation and reinstate the entire original sentence.

*State v. Taylor*, 992 S.W.2d 941, 944 (Tenn. 1999). Because the trial court was free, until the petitioner's successful completion of her entire probationary term, to order the original eight-year sentence to be served in the Department of Correction, it was also free to reinstate the original sentence of eight years' probation.

Moreover, neither Tennessee Code Annotated section 40-35-308 nor *State v. Hunter*, 1 S.W.3d 643 (Tenn. 1999), prohibits the trial court from restarting the petitioner's original eight-year sentence of probation. In *Hunter*, our supreme court expressly held that "when a trial court has determined that a probation violation has occurred, it possesses the authority to: (1) order incarceration; (2) *order the original probationary period to commence anew*; or (3) extend the remaining period of probation for as much as an additional two years." *Id.* at 644 (emphasis added). The high court also observed that

[n]othing in the text of section 40-35-308(c) prohibits a trial court from causing execution of a defendant's original sentence. Had the legislature intended for the statute to limit a trial court's authority in probation revocation proceedings, it could have so provided in the text of the statute. It did not. Furthermore, the appellant's interpretation of section 40-35-308(c) overlooks the language in sections 40-35-310 and 40-35-311 stating that upon revocation a trial court has the authority to impose a defendant's original sentence.

*Id.* at 647. The supreme court also expressly rejected *Hunter's* argument "that reinstating the original probationary term every time probation is revoked produces a result which is too harsh for some defendants." *Id.*

In the present case, following the 1996 eight-year sentence, the 1999 revocation warrant "interrupt[ed] the running of the probationary period 'until such time as the trial court [may] hear and determine the issue raised by the [warrant].'" *State v. Shaffer*, 45 S.W.3d 553, 555 (Tenn. 2001) (quoting *McGuire v. State*, 200 Tenn. 315, 320, 292 S.W.2d 190, 193 (1956)) (second and third alterations in original). The 1999 revocation order restarted the eight-year sentence, subject to credit for the 90 days' confinement served in 1996. Then, the 2003 revocation warrant interrupted the running of the probationary period, *see id.*, and we believe that the resulting revocation order again restarted the original sentence, subject to credit for the total of 180 days' confinement that had been previously ordered. As such, then, the June 2006 revocation warrant was timely, and the resulting July 2007 revocation order restarted again the running of the original sentence, subject to applicable credit for time served.

For purposes of the habeas corpus proceeding before us, the time line illustrates that the petitioner is not entitled to relief via either of the conceptual bases for the writ – lack of sentencing jurisdiction or expiration of sentence. First, in response to the timely June 2006

revocation warrant, the trial court obviously had jurisdiction to enter the July 2007 revocation order, pursuant to which the petitioner was obliged to serve her original sentence, subject to credit for time served. Second, for purposes of the expiration-of-sentence prong of habeas corpus law, the time line shows that the petitioner's sentence had not expired when the habeas corpus court dismissed the petition in August 2007. For that matter, the sentence has not expired even as we pen this opinion. *See Robert R. McCray v. State*, No. E2004-01438-CCA-R3-HC, slip op. at 2 (Tenn. Crim. App., Knoxville, Apr. 21, 2005) ("Release eligibility . . . is disregarded in determining sentence expiration for habeas corpus purposes.").

Because the petitioner has failed to establish that her sentence is expired or that the trial court was without authority to enter the judgment, she is not entitled to habeas corpus relief. Accordingly, the judgment of the trial court dismissing her petition for writ of habeas corpus is affirmed.

## *II. Corrected Judgment*

The judgment form included in the record on appeal indicates that the petitioner was convicted of a Class A felony. Possession of cocaine with intent to sell or deliver only becomes a Class A felony when it occurs within 1000 feet of a school. See T.C.A. § 39-17-417, -432 (2006). Nothing in the record suggests that the petitioner's offense occurred within a school zone, and indeed her sentence, eight years, is not available for a Range I offender convicted of a Class A felony. *See id.* § 40-35-112(a)(1) (2006). In consequence, we order the trial court to correct the judgment form in this case to indicate that the petitioner was convicted of a Class B felony.

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JAMES CURWOOD WITT, JR., JUDGE