

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
January 13, 2009 Session

MICHAEL GARRETT v. STATE OF TENNESSEE

Appeal from the Circuit Court for Rutherford County
No. F-60212, F-42546 Don R. Ash, Judge

No. M2008-00046-CCA-R3-HC - Filed August 19, 2009

After the Rutherford County Circuit Court granted Petitioner Michael Garret's request for habeas corpus relief in which Petitioner claimed that an amended judgment was void because it was entered without notice and not served on him until after the completion of his original sentence, the State appealed. On appeal, the State contends that the trial court improperly granted habeas relief where Petitioner's writ of habeas corpus failed to allege a cognizable claim for relief against an amended judgment. We determine that the habeas corpus court improperly granted habeas corpus relief where the judgment was not void on its face, but merely voidable. Accordingly, the judgment of the habeas corpus court is reversed and remanded for further proceedings consistent with this opinion.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court is Reversed and Remanded.

JERRY L. SMITH, J., delivered the opinion of the court, in which DAVID H. WELLES and ROBERT W. WEDEMEYER, JJ., joined.

Robert E. Cooper, Jr., Attorney General and Reporter; Mark A. Fulks, Assistant Attorney General; Bill Whitesell, District Attorney General, and Jude P. Santana, Assistant District Attorney General, for the appellant, State of Tennessee.

Darwin K. Colston, Murfreesboro, Tennessee, for the appellee, Michael Garrett.

OPINION

Petitioner was charged with one count of aggravated sexual battery and two counts of child rape. In October of 1997, Petitioner pled guilty to rape, a class B felony in violation of Tennessee Code Annotated section 39-13-563, in exchange for the dismissal of one count of aggravated sexual

battery and one count of attempted child rape.¹ As a result of the guilty plea, Petitioner received a sentence of nine years and six months, to be served as a violent offender. The trial court imposed a “surcharge” of \$250 in accordance with Tennessee Code Annotated section 39-13-709.

Subsequently, on September 5, 2005, the trial court entered an amended judgment, which reflected that “Pursuant to 39-13-524² the defendant is sentenced to community supervision for life following sentence expiration.”³

On May 8, 2007, Petitioner was indicted by the Rutherford County Grand Jury for a violation of community supervision for life, in violation of Tennessee Code Annotated section 39-13-526.

On September 3, 2007, Petitioner filed a petition for writ of habeas corpus in the Circuit Court for Rutherford County. In the petition, Petitioner alleged that neither he nor his attorney was notified that an amended judgment was filed in 2005 to reflect that he was subject to community supervision for life and that he was not informed that he would be subject to community supervision for life at sentencing or in his plea agreement. Further, Petitioner alleged that he was only notified that he was required to report for lifetime community supervision after his release from incarceration. As a result of the amended judgment, Petitioner sought habeas corpus relief. Petitioner attached the original and amended judgments to the petition, along with his guilty plea agreement.

¹ The “Petition to Enter Plea of Guilty Admonition and Waiver of Rights Negotiated Plea Agreement” form specifies in one place that the “conviction” in Count II to be dismissed is “Attempted Child Rape.” In another space on the same form, the word “Attempted” is scratched out. It is unnecessary for this Court to reconcile this discrepancy as the dismissal of Count II is not an issue on appeal.

² Tennessee Code Annotated section 39-13-524 provides, in pertinent part:

a) In addition to the punishment authorized by the specific statute prohibiting the conduct, any person who, on or after July 1, 1996, commits a violation of § 39-13-502, § 39-13-503, § 39-13-504, § 39-13-522, or attempts to commit a violation of any of these sections, shall receive a sentence of community supervision for life.

(b) The judgment of conviction for all persons to whom the provisions of subsection (a) apply shall include that the person is sentenced to community supervision for life.

(c) The sentence of community supervision for life shall commence immediately upon the expiration of the term of imprisonment imposed upon the person by the court or upon the person’s release from regular parole supervision, whichever first occurs. . . .

³ This status was indicated by the checking of a box on the judgment form. The original judgment form did not contain this box.

In response, the State filed a motion to dismiss the petition, arguing that Petitioner did not properly file the petition because it was filed in the Circuit Court for Rutherford County and was not initiated as a civil action. Next, the State argued that the petition was not served on the State Attorney General or the Department of Probation and Parole and was filed in the wrong venue. The State, in the alternative, argued that the amended judgment was valid on its face and, therefore, Petitioner is not entitled to relief. The State also argued that, at most, Petitioner established that a clerical error existed in the judgment that could have been corrected by the trial court at any time.

Petitioner subsequently filed an amended petition for relief in which he named both the State and the Chairman of the Board of Probation and Parole as Respondents and argued that venue was proper in Rutherford County. Further, Petitioner served the State Attorney General with a copy of the amended petition. The State again sought a dismissal of the petition.

The habeas corpus court held a hearing on the motions. At the hearing, the habeas corpus court granted the petition for habeas corpus relief and reset the case for trial. The habeas corpus court also dismissed the charge of violation of the sex offender registry. The habeas corpus court entered an order on December 13, 2007, in which it determined: (1) that venue was proper in Rutherford County as it was the county of Petitioner's residence; (2) that the underlying conviction for rape of a child was "illegal without the community supervision for life sentence;" (3) that Petitioner properly challenged the conviction via the writ of habeas corpus; and (4) that the "amended judgment was unlawful because no notice of an additional sentence, community supervision for life, was afforded to [Petitioner]." The State filed a timely notice of appeal.

Analysis

On appeal, the State argues that the record does not support the habeas corpus court's factual determination that the amended judgment was entered without notice to Petitioner and, further, that "due process violations are not cognizable in habeas corpus proceedings." Petitioner, on the other hand, argues that the court properly granted habeas corpus relief because the original judgment is void because it did not contain the provision regarding lifetime supervision. Further, Petitioner argues that the court was without jurisdiction to correct the void judgment.

The determination of whether to grant habeas corpus relief is a question of law. *See Hickman v. State*, 153 S.W.3d 16, 19 (Tenn. 2004). As such, we will review the habeas corpus court's findings de novo without a presumption of correctness. *Id.* Moreover, it is a petitioner's burden to demonstrate, 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).

Article I, section 15 of the Tennessee Constitution guarantees an accused the right to seek habeas corpus relief. *See 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 that the convicting court was without jurisdiction to convict or sentence the defendant or that the defendant 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). In other words, habeas corpus relief may be sought only when the judgment is void, not merely voidable. *See Taylor*, 995 S.W.2d at 83. “A void judgment ‘is one in which the judgment is facially invalid because the court lacked jurisdiction or authority to render the judgment or because the defendant’s sentence has expired.’ We have recognized that a sentence imposed in direct contravention of a statute, for example, is void and illegal.” *Stephenson v. Carlton*, 28 S.W.3d 910, 911 (Tenn. 2000) (quoting *Taylor*, 955 S.W.2d at 83).

However, if after a review of the habeas petitioner’s filings the habeas corpus court determines that the petitioner would not be entitled to relief, then the petition may be summarily dismissed. T.C.A. § 29-21-109; *State ex rel. Byrd v. Bomar*, 381 S.W.2d 280 (Tenn. 1964). Further, a habeas corpus court may summarily dismiss a petition for writ of habeas corpus without the appointment of a lawyer and without an evidentiary hearing if there is nothing on the face of the judgment to indicate that the convictions addressed therein are void. *Passarella v. State*, 891 S.W.2d 619 (Tenn. Crim. App. 1994).

The procedural requirements for habeas corpus relief are mandatory and must be scrupulously followed. *Summers v. State*, 212 S.W.3d 251, 260 (Tenn. 2007); *Hickman*, 153 S.W.3d at 19-20; *Archer*, 851 S.W.2d at 165. The formal requirements for an application or petition for writ of habeas corpus are found at T.C.A. § 29-21-107:

- (a) Application for the writ shall be made by petition, signed by either the party for whose benefit it is intended, or some person on the petitioner’s behalf, and verified by affidavit.
- (b) The petition shall state:
 - (1) That the person in whose behalf the writ is sought, is illegally restrained of liberty, and the person by whom and place where restrained, mentioning the name of such person, if known, and if unknown, describing the person with as much particularity as practicable;
 - (2) The cause or pretense of such restraint according to the best information of the applicant, and if it be by virtue of any legal process, a copy thereof shall be annexed, or a satisfactory reason given for its absence;
 - (3) That the legality of the restraint has not already been adjudged upon a prior proceeding of the same character, to the best of the applicant’s knowledge and belief; and
 - (4) That it is the first application for the writ, or, if a previous application has been made, a copy of the petition and proceedings there shall be produced, or satisfactory reasons should be given for the failure to do so.

T.C.A. § 29-21-107. “A habeas corpus court may properly choose to dismiss a petition for failing to comply with the statutory procedural requirements” *Summers*, 212 S.W.3d at 260; *Hickman*, 153 S.W.3d at 21. Further, in *Summers*, our supreme court explained:

In the case of an illegal sentence claim based on facts not apparent from the face of the judgment, an adequate record for summary review must include pertinent documents to support those factual assertions. When such documents from the record of the underlying proceedings are not attached to the habeas corpus petition, a trial court may properly choose to dismiss the petition without the appointment of counsel and without a hearing.

212 S.W.3d at 261.

Again, the State argues on appeal that the habeas corpus court improperly granted habeas corpus relief where the amended judgment was not void. We agree. The court was well within its authority to correct an illegal sentence. The sentence initially imposed on Petitioner for the rape conviction was illegal because it directly contravened a statute in existence at the time it was imposed. *See Taylor*, 995 S.W.2d at 85. In *Bronson v. State*, 172 S.W.3d 600 (Tenn. Crim. App. 2004), this Court determined that “the failure to include the community supervision for life provisions [to multiple defendants’ convictions for various sexual offenses] rendered the defendants’ sentences illegal.” 172 S.W.3d at 601-02. As a result, the “trial court had jurisdiction to correct the illegal sentences by amending the judgments of conviction. *Id.* (citing *Burkhart*, 566 S.W.2d at 873). Typically, the judgment of a trial court becomes final thirty days after entry, unless there is a timely-filed notice of appeal or an appropriate post-trial motion. Tenn. R. App. P. 4(a), (c); *See State v. Green*, 106 S.W.3d 646, 648 (Tenn. 2003). The trial court loses jurisdiction to amend or alter a judgment once the judgment becomes final. *See Green*, 106 S.W.3d at 648-49. However, “[a]s a general rule, a trial judge may correct an illegal, as opposed to a merely erroneous, sentence at any time, even if it has become final.” *State v. Burkhart*, 566 S.W.2d 871, 873 (Tenn. 1978); *see also Bronson*, 172 S.W.3d at 601-02. The habeas corpus court’s conclusion that the trial court lacked the jurisdiction to correct the illegal sentence was improper.

Had the trial court failed to correct the illegal sentence, Petitioner could have challenged the illegality of the sentence properly in a habeas corpus petition. *Moody v. State*, 160 S.W.3d 512, 516 (Tenn. 2005) (holding “the proper procedure for challenging an illegal sentence at the trial level is through a petition for writ of habeas corpus, the grant or denial of which can then be appealed under the Rules of Appellate Procedure.”) (citing *Stephenson v. Carlton*, 28 S.W.3d 910, 912 (Tenn. 2000)). Petitioner also could have challenged the void or illegal sentence collaterally in a post-conviction proceeding when the statutory requirements are met. *See id.* (citing *State v. Mahler*, 735 S.W.2d 226, 228 (Tenn. 1987)).

Petitioner could have challenged the corrected judgment as contrary to his plea agreement. Our Rules of Criminal Procedure provide that a motion to withdraw a guilty plea must be made prior to sentence being imposed or, “to correct manifest injustice,” after the imposition of sentence but before the judgment becomes final. *See* Tenn. R. Crim. P. 32(f). Petitioner is clearly time-barred from such a motion in this case.

Petitioner could have also sought review of the voluntariness of his plea via a petition for post-conviction relief. *See, e.g., Reiko Nolen v. State*, No. W2001-03003-CCA-R3-CD, 2002 WL 31443174, at *4 (Tenn. Crim. App., at Jackson, Oct. 31, 2002). However, absent an appeal, a petitioner has only one year from the date on which his or her judgment becomes final in which to file for post-conviction relief. *See* T.C.A. § 40-30-102(a). As set forth above, the judgment of a trial court becomes final thirty days after its entry, absent a timely notice of appeal or post-trial motion. Tenn. R. App. P. 4(a), (c); *See Green*, 106 S.W.3d at 648. Here, however, the relevant “trigger” date was the date on which the trial court filed its corrected judgment: September 8, 2005. *See Manny T. Anderson v. State*, No. M2002-00641-CCA-R3-PC, 2003 WL 2002092, at *4 (Tenn. Crim. App., at Nashville, April 30, 2003) (holding that, when an amended judgment was filed three years after the original entry of judgment, the post-conviction limitations period began to run on the date the amended judgment was filed). The limitations period has clearly expired.

We determine that as corrected, Petitioner’s sentence is not illegal. With the filing of the habeas petition, Petitioner attempted to nullify a legal sentence and reinstate an illegal one. This was accomplished erroneously when the habeas court granted the petition for relief. We are unaware of any procedure available for attaining this objective. At best, Petitioner would be entitled to have his plea set aside in a post-conviction attack on his conviction, but the post-conviction avenue for this attack is no longer available because of the passage of time and the petition does not set forth any of the grounds in Tennessee Code Annotated section 40-30-102(b) for extending the limitations period.

As stated previously, a writ of habeas corpus may be granted only where it is apparent from the face of the judgment or the record of the proceedings upon which the judgment is rendered that a sentence is illegal. *Stephenson v. Carlton*, 28 S.W.3d 910 (Tenn. 2000). As explained above, the corrected judgment in this does not reflect an illegal or void sentence. Petitioner is not entitled to habeas corpus relief. *See Dennis Eugene Evans v. State*, No. E2004-01059-CCA-R3-PC, 2004 WL 2853296 at *2-3 (Tenn. Crim. App., at Knoxville, Dec. 13, 2004); *Michael D. O’Guin v. Myers*, No. M2003-02846-CCA-R3-HC, 2004 WL 2290487 (Tenn. Crim. App., at Nashville, Oct. 12, 2004) (petitioner being held pursuant to a judgment that corrected the initial judgment’s illegal sentence was not entitled to habeas corpus relief because the amended judgment ordered the correct sentence and the correct conviction and was therefore not void as illegal).

Conclusion

In conclusion, because we determine that the judgment, as amended, is not void, Petitioner was not entitled to habeas corpus relief. Consequently, the judgment of the habeas corpus court is reversed and remanded for further proceedings in accordance with this opinion. On remand, the trial court should reinstate the amended judgment reflecting that Petitioner is subject to community supervision for life.

JERRY L. SMITH, JUDGE

