

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs February 4, 2003

GEORGE CAMPBELL, JR. v. BRUCE WESTBROOKS, WARDEN

**Direct Appeal from the Criminal Court for Shelby County
No. P-19345 Chris Craft, Judge**

No. W2002-02086-CCA-R3-CO - Filed October 6, 2003

The petitioner, George Campbell, Jr., was convicted by a jury of felony murder and aggravated assault. He was sentenced to life imprisonment for the felony murder conviction and ten years confinement for the aggravated assault conviction. Subsequently, the petitioner filed a pro se petition for writ of habeas corpus, alleging that his convictions were void because the trial court was without jurisdiction to render judgment. The trial court summarily dismissed the petition and the petitioner appealed to this court. Upon review of the record and the parties' briefs, we affirm the trial court's dismissal of the petition for writ of habeas corpus.

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

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which DAVID H. WELLES and JERRY L. SMITH, JJ., joined.

George Campbell, Jr., Henning, Tennessee, pro se.

Paul G. Summers, Attorney General and Reporter; Braden H. Boucek, Assistant Attorney General; and William L. Gibbons, District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Factual Background

In 1994, the petitioner was convicted by a jury in the Shelby County Criminal Court of felony murder and aggravated assault. The jury sentenced the petitioner to life imprisonment for the felony murder conviction and the trial court sentenced the petitioner to ten years confinement for the aggravated assault conviction. The trial court ordered that the two sentences be served consecutively. On direct appeal, this court affirmed the petitioner's convictions and sentences. State v. George Campbell, Jr., No. 02C01-9408-CR-00165, 1996 Tenn. Crim. App. LEXIS 391 (Jackson, June 28, 1996). The petitioner subsequently filed a petition for post-conviction relief, and on appeal this court affirmed the post-conviction court's denial of that petition. George Campbell, Jr. v. State,

No. W2000-00703-CCA-R3-PC, 2001 Tenn. Crim. App. LEXIS 722 (Jackson, Sept. 10, 2001). The petitioner is currently confined at the West Tennessee State Penitentiary in Lauderdale County.

On May 28, 2002, the petitioner filed in the Shelby County Criminal Court a pro se petition for habeas corpus relief, alleging that his convictions were void because the trial court was without jurisdiction to render judgment. Specifically, the petitioner argued that in case number 93-00429 he was charged with felony murder in count one of the indictment and premeditated first degree murder in count two of the indictment. The petitioner claimed that at the conclusion of the proof at trial, the trial court dismissed count two and instructed the jury on felony murder as charged in count one of the indictment. However, according to the petitioner, the jury returned a guilty verdict on count two, premeditated first degree murder, which charge the trial court had dismissed. The petitioner maintained that the jury did not have jurisdiction to convict the petitioner on this count.

The petitioner also argued that although he was convicted of felony murder and aggravated assault, there was no evidence that he “alone” committed these offenses. Thus, the petitioner claimed that he should have been indicted on charges of criminal responsibility for or facilitation of the offenses of felony murder and aggravated assault. The petitioner argued that conviction upon a charge for which he was not indicted “is a sheer denial of [his] 14th Amendment Due Process Rights.” The petitioner asserted that his convictions for felony murder and aggravated assault “should be dismissed and vacated.”

On July 30, 2002, the trial court summarily dismissed the petition, finding the petitioner’s argument to be “patently false on the face of the record.” According to the trial court, “the verdict returned by the jury, and signed by the foreperson, [stated,] ‘We, the Jury, find the defendant guilty of Murder in the Perpetration of Aggravated Robbery as charged in Count One of the indictment.’” The trial court did not address the petitioner’s second argument. This appeal followed.

II. Analysis

When reviewing a petition for habeas corpus relief, the determination of whether relief should be granted is a question of law subject to de novo review with no presumption of correctness. McLaney v. Bell, 59 S.W.3d 90, 92 (Tenn. 2001) (citing Hart v. State, 21 S.W.3d 901, 903 (Tenn. 2000)). The burden is on the petitioner to demonstrate by a preponderance of the evidence that he is entitled to relief. Wyatt v. State, 24 S.W.3d 319, 322 (Tenn. 2000).

Article I, section 15 of the Tennessee Constitution guarantees the right to seek habeas corpus relief. However, Tennessee law provides narrow grounds upon which such relief may be granted. McLaney, 59 S.W.3d at 92. Habeas corpus relief will be granted “only when it appears upon the face of the judgment or the record of the proceedings upon which the judgment is rendered that a court lacked jurisdiction or authority to sentence a defendant or that the sentence has expired.” Stephenson v. Carlton, 28 S.W.3d 910, 911 (Tenn. 2000) (citing Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993)). In other words, habeas corpus relief may be sought only when the judgment is void, not merely voidable. Id. “[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.” State v. Ritchie, 20 S.W.3d 624, 630 (Tenn. 2000) (quoting Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999)).

Initially, we note that on appeal the State correctly asserts that the instant petition should have been dismissed because it was not filed in the court “most proximate to the petitioner.” Under Tennessee Code Annotated section 29-21-105 (2000), a petition for habeas corpus relief “should be made to the court or judge most convenient in point of distance to the applicant, unless a sufficient reason be given in the petition for not applying to such court or judge.” The procedural provisions of the habeas corpus statutes are mandatory and must be scrupulously followed. Archer, 851 S.W.2d at 165.

According to the record, at the time the petitioner filed his petition in the Shelby County Criminal Court, he was incarcerated in Lauderdale County. In his petition for writ of habeas corpus, the petitioner stated that he filed his petition in the Shelby County Criminal Court because he was convicted and sentenced in Shelby County and the Shelby County court possessed all the necessary records. However, this court has previously held that this is not a “sufficient reason” under section 29-21-105 for filing a petition for habeas corpus relief in the court of conviction instead of the court most convenient to the petitioner. Paul Barnett v. State, No. E1999-01583-CCA-R3-CD, 2000 Tenn. Crim. App. LEXIS 469 (Knoxville, June 20, 2000); Charles Bryant v. State, No. 03C01-9803-CR-00115, 1999 Tenn. Crim. App. LEXIS 421 (Knoxville, May 4, 1999). Accordingly, we conclude the trial court should have dismissed the petition due to the petitioner's failure to file in Lauderdale County.

Regardless, we conclude that the issues raised by the petitioner on appeal lack merit. Initially, the petitioner raises several issues challenging the procedure of the trial court in denying his petition for writ of habeas corpus. Specifically, the petitioner asserts that Judge Otis Higgs prejudiced the judicial process by refusing to order the Shelby County Criminal Court Clerk's Office to file the petition and that Judge Chris Craft entered an order denying the petition without the petition being filed. The petitioner also argues that, because the order denying his petition is not signed by the judge and does not bear the “[c]ertificate of the clerk,” the order is void. However, we note that these issues are not cognizable in a habeas corpus claim. Stephenson, 28 S.W.3d at 911. In any event, our review of the record reflects that the petition for habeas corpus relief was filed in the Shelby County Criminal Court on May 28, 2002. Thereafter, on July 30, 2002, the trial court entered an order denying the petition, which order was both signed by the judge and marked as filed by the clerk's office.

Next, the petitioner asserts that the trial court did not have the authority to independently investigate the facts in this case before denying his petition for habeas corpus relief. As previously noted, after reviewing the jury verdict, the trial court entered an order denying the instant petition, finding the petitioner's allegation to be “patently false on the face of the record.” “It is a well-established principle of law that a ‘judge is not permitted to make an investigation of a case, even an inadvertent one, and then base a holding on the information obtained’” State v. Hart, 911

S.W.2d 371, 376 (Tenn. Crim. App. 1995) (quoting Vaughn v. Shelby Williams of Tennessee, Inc., 813 S.W.2d 132, 133 (Tenn. 1991)); see also Tenn. R. Sup. Ct. 10, Code of Judicial Conduct, Canon 3(B)(7) (Commentary). However, in determining whether a petitioner is entitled to habeas corpus relief, the trial court must review “the judgment or the record of the proceedings upon which the judgment is rendered.” See Stephenson, 28 S.W.3d at 911. In the instant case, we conclude that the trial court was not conducting an independent investigation of the facts, but was merely reviewing the record upon which judgment was rendered in order to determine whether the petitioner was entitled to relief. This issue is without merit.

Next, the petitioner contends that the indictments, jury verdicts, minutes, and judgments of conviction are void because the documents were not signed by the judge or certified by the trial court clerk. However, we note that the petitioner did not raise these issues in his petition for writ of habeas corpus, and this court will not consider issues raised for the first time on appeal. See State v. Turner, 919 S.W.2d 346, 356 (Tenn. Crim. App. 1995). Accordingly, these arguments have been waived. Nevertheless, this court has previously held that the failure of the trial court to sign the judgment of conviction or the minutes does not render the judgment void. Willie James Robinson, Jr. v. State, No. E1999-00945-CCA-R3-PC, 2000 Tenn. Crim. App. LEXIS 662 (Knoxville, Aug. 30, 2000); see also Jerry L. Johns v. State, No. E1999-00260-CCA-R3-CD, 2000 Tenn. Crim. App. LEXIS 208 (Knoxville, Mar. 9, 2000) (holding that the provisions requiring the trial court to sign the minutes are directory rather than mandatory and the failure to sign the minutes does not invalidate the judgment).

Next, the petitioner asserts that although he was indicted for premeditated first degree murder, felony murder, and aggravated assault, the State “added” criminal responsibility, robbery, aggravated robbery, and criminal attempt. The petitioner claims that he should have been indicted on these charges and that being convicted of a charge for which he was not indicted “is a sheer denial of [his] 14th Amendment Due Process Rights,” rendering his convictions void. However, our review of the record reflects that the petitioner was convicted of felony murder and aggravated assault as indicted.

Finally, the petitioner argues that the trial court erred by denying his petition without an evidentiary hearing. However, we note that when the allegations in a petition for writ of habeas corpus would not entitle the petitioner to relief, a trial court may dismiss the petition without a hearing. Tenn. Code Ann. § 29-21-109 (2000); see also Dixon v. Holland, 70 S.W.3d 33, 36 (Tenn. 2002).

In his petition for writ of habeas corpus, the petitioner alleged that at the conclusion of the proof at trial, the trial court dismissed count two charging the petitioner with premeditated first degree murder and instructed the jury on felony murder as charged in count one of the indictment. The petitioner then asserted that the jury returned a guilty verdict on count two, which charge the trial court dismissed. However, in its order denying the petition, the trial court noted that the jury verdict stated, “We, the Jury, find the defendant guilty of Murder in the Perpetration of Aggravated Robbery as charged in Count One of the indictment.” The trial court summarily dismissed the

petition, finding the petitioner's argument to be "patently false on the face of the record." Because the petition failed to demonstrate that the petitioner was entitled to relief, the trial court properly dismissed the petition without a hearing.

III. Conclusion

Based upon the foregoing, we affirm the judgment of the trial court.

NORMA McGEE OGLE, JUDGE