

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON
JUNE 1995 SESSION

FILED
February 29, 1996
Cecil Crowson, Jr.
Appellate Court Clerk

FRED RANEY, WARDEN,
STATE OF TENNESSEE,
Appellee,

V.

BILLY MCGHEE,
Appellant.

) C.C.A. NO. 02C01-9501-CC-00021
)
) Lauderdale County Circuit No. 4456
)
) Hon. Joe H. Walker, III
)
) (Habeas Corpus)
)
)

FOR THE APPELLANT:

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FOR THE APPELLEE:

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OPINION FILED: _____

AFFIRMED

MARY BETH LEIBOWITZ,
Special Judge

OPINION

This is an appeal as of right by the Pro Se Appellant, Billy McGhee, from the judgment of the Lauderdale County Circuit Court, denying his Petition for Writ of Habeas Corpus. The Appellant contends in his single issue that he stated a cognizable constitutional claim pursuant to the habeas corpus statute and that the court erred in transforming the writ of habeas corpus into a petition for post-conviction relief and dismissing it as time barred.

In March 1984, the Defendant was indicted by the Shelby County Grand Jury in eight (8) counts charging the Defendant with aggravated rape. The Defendant pled guilty as charged and was sentenced to twenty (20) years imprisonment on each of the indictments on January 28, 1986. On March 22, 1985, the Shelby County Grand Jury returned four (4) additional indictments charging the Defendant with aggravated rape. As to these charges the Defendant went to trial and was convicted of aggravated rape and sentenced to forty (40) years on each indictment on December 10, 1985. Following the jury trial an appeal ensued and the cases were reversed and remanded. The Defendant was subsequently re-indicted and pled guilty to aggravated sexual battery in 1988. The Defendant has thereafter filed twelve (12) petitions for writ of habeas corpus alleging that the indictments in the cases on which he originally pled guilty and the four (4) cases on which he was subsequently found guilty of aggravated sexual battery were constitutionally void. He cites the same reasons that the Supreme Court found to hold that the indictments were void on appeal of the first four trials. The Defendant urges that he is entitled to appointment of counsel and to an evidentiary hearing on his petition. He further submits that it was error to treat the writ of habeas corpus as a post-conviction petition.

The State asserts that the Defendant has not asserted the necessary claims for habeas corpus relief.

We agree with the State and affirm the convictions.

Although the Defendant asserts that the indictments were improperly charged and incorrect, he did not put forth a claim that his convictions are void within the meaning of Tenn. Code Ann. 29-21-101 et seq. Pursuant to that statute a conviction must be void upon its face, not merely voidable, and the Defendant's term of imprisonment would have to have expired. Neither of these claims are made by the Defendant. In Passerella v. State, Davidson County, C.C.A. No. 01C01-9402-CR-00035, (July 28, 1994), this Court has clearly set out the circumstances of

habeas corpus relief and what constitutes a void judgment.

It is a well-established principle of law that the remedy of habeas corpus is limited in scope as well as relief. In criminal cases, the remedy is limited to cases where the judgment is void or the term of imprisonment has expired.....

If the court rendering a judgment has jurisdiction of the person, the subject-matter, and has the authority to make the challenged judgment, the judgment is voidable, not void; and the judgment may not be collaterally attacked in a suit for habeas corpus relief.

Thus the writ of habeas corpus is not available under these circumstances and the court properly reviewed the petition as a post-conviction petition attacking allegedly unconstitutional grounds. The writ of habeas corpus is only available when the prisoner's sentence is void or his term of imprisonment has expired. State v. Warren, 740 S.W.2nd 427, (Tenn. Crim. App. 1986). A writ of habeas corpus may not be used to make a collateral attack against a valid judgment and conviction. State ex rel. Smith v. Bomar, 368 S.W.2nd 748, (Tenn. 1963). In State ex rel. Wood v. Johnson, 393 S.W.2nd 135, (1965), the Defendant averred that he was coerced into pleading guilty, and this constituted a collateral attack upon a valid judgment of a court of general jurisdiction which could not be made by petition for habeas corpus. Further State ex rel. Carroll v. Henderson, 443 S.W.2nd 689, (1969), says that a Petition for habeas corpus may not be used to review or correct errors of law or fact committed by the court in the exercise of its jurisdiction, and the writ cannot be used as a substitute for or to serve the purpose of appeal or writ of error or to obtain a rehearing in the appellate court.

Thus the Defendant has not stated a ground for habeas corpus relief, and has also failed to show that he is entitled to relief under the Post-Conviction Act. The issue is therefore without merit and the judgment of the trial court is affirmed.

MARY BETH LEIBOWITZ, SPECIAL JUDGE

CONCUR:

PAUL G. SUMMERS, JUDGE

WILLIAM M. BARKER, JUDGE