

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

DECEMBER 1995 SESSION

DAVID T. REDFERN,)
)
 Appellant,)
)
 v.)
)
 RICKY J. BELL, Warden,)
)
 Appellee.)

No. 01C01-9505-CC-00148

Hickman County

Hon. Donald P. Harris , Judge

(Habeas Corpus)

FILED

May 9, 1996

Cecil W. Crowson
Appellate Court Clerk

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OPINION FILED: _____

AFFIRMED

Joseph M. Tipton
Judge

OPINION

The petitioner, David T. Redfern, appeals as of right from the dismissal of his petition for habeas corpus relief by the Hickman County Circuit Court. The petitioner asserts that his present sentence of ten years that he received in July 1990 for the offense of aggravated sexual battery, committed in 1988, is void because it violates the prohibition against ex post facto laws, the right to due process of law, and the right to equal protection of the law. We disagree.

The petitioner alleges that the trial court sentenced him under the 1989 Sentencing Reform Act, which exposed him to a range of eight to twelve years, but failed to determine an appropriate sentence under the law existing at the time of the offense, which exposed him to a range of five to twenty years. See State v. Pearson, 858 S.W.2d 879 (Tenn. 1993). In dismissing the petition, the trial court stated that the ten-year sentence actually imposed was within the range of exposure for both acts and was, therefore, not illegal. It stated that the writ of habeas corpus may not be used as a substitute for an appeal.

When a petitioner is being held pursuant to a judgment of conviction, habeas corpus relief is available only when it can be shown that the judgment is void or the sentence of imprisonment has expired. See Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993). In this respect, before a judgment can be declared to be void, “the judgment itself or the record of the proceedings, standing alone, must show a want of jurisdiction” Passarella v. State, 891 S.W.2d 619, 628 n.49 (Tenn. Crim. App.), app. denied (Tenn. 1994).

The judgment of conviction in this case is facially valid and includes a lawful sentence. The fact that the trial court did not conduct on the record the dual

calculations required under Pearson did not divest the trial court of the jurisdiction to impose a ten-year sentence nor does it otherwise render that sentence now void. The judgment of the trial court dismissing the petition for writ of habeas corpus is affirmed.

Joseph M. Tipton, Judge

CONCUR:

Joe B. Jones, Presiding Judge

Paul G. Summers, Judge