IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

FEBRUARY 1996 SESSION

STATE OF TENNESSEE, APPELLEE,	)	No. 02-C-01-9505-CC-00147
v.	)	Gibson County
	)	Dick Jerman, Jr., Judge
	)	(Community Corrections Revocation)
RONNIE WILLIAM (BILLY) TAYLOR, APPELLANT.	)	

DISSENTING OPINION

I respectfully dissent from the opinion of my colleagues. While acknowledging that the record is far less than ideal for a full and final disposition of the issues, certain facts are apparent. In March of 1990, the defendant entered guilty pleas to two counts of burglary and misdemeanor theft under Indictment No. 14075; the defendant was sentenced to two years on each burglary count and 11 months and 29 days for the theft, all of which were to be served concurrently and in community corrections. On the same date, the defendant entered guilty pleas under Indictment 14125 to burglary and misdemeanor theft; the trial court imposed concurrent sentences of two years and 11 months and 29 days, respectively, both of which were to be served in community corrections. The sentences for Indictments No. 14075 and 14125 were ordered to be served concurrently with each other. Thus, the effective sentence was two years, all of which was to be served in community corrections.

In July of 1990, the defendant was found to be in violation of the terms of his release. Afterward, he was ordered to serve an effective sentence of four years on Indictments No. 14075 and 14125.

In September of 1990, the defendant entered guilty pleas to two counts of theft under Indictment No. 14180; the trial court granted probation on concurrent two-year sentences which were ordered to be served consecutively with the convictions under the prior two indictments.

It was not until September of 1994 that the state filed a petition to revoke the community corrections sentences. That petition included an allegation which, from all appearances within this record, is mistaken; that is, the sentences for Indictments No. 14075 and 14125 would not be fully served until 1996. The record, while incomplete, as suggested by the majority, does indicate that sometime after the revocation petition was filed, the trial court eventually increased the effective sentence to ten years.

Because the judgments are facially valid and indicate that the March 1990 two-year sentence which was legitimately lengthened afterward to four years, the sentences under Indictments 14075 and 14125 appear to have been fully served as early as March of 1994. Thus, the trial court, which would have otherwise been able to increase a community corrections sentence within the applicable range, would have had no authority to act beyond the date the sentences had expired. See Carroll v. Raney, 868 S.W.2d 721 (Tenn. Crim. App. 1993).

Judicial economy would be served better by addressing the issue. Otherwise, since we have rejected the appeal, the defendant will likely file a petition

seeking post-conviction or habeas corpus relief. A void sentence may be set aside at anytime. See State v. Phillip R. Woods, _____ S.W.2d _____, No. 02C01-9505-CC-00129, slip op. at 5-6 (Tenn. Crim. App., at Jackson, April 17, 1996). See also State v. Mahler, 735 S.W. 2d 227 (Tenn. 1987). Furthermore, "Habeas corpus relief is available in Tennessee ... when 'it appears upon the face of the judgment or the record of the proceedings upon which the judgment is rendered' that a convicting court was without jurisdiction or authority to sentence a defendant, or that a defendant's sentence of imprisonment or other restraint has expired." Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993). Our Constitution provides that "a proper petition for issuance of a writ of habeas corpus may be brought at any time while the petitioner is incarcerated to contest a void judgment or an illegal confinement." Id. (Citing article I, section 15 of the Tennessee Constitution).

Under these circumstances, it appears that the more appropriate remedy would have been to remand the cause to the trial court for further consideration of the underlying facts. That would appear to be the best possible course under these circumstances as opposed to altogether rejecting the appeal on procedural grounds.

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Gary R. Wade, Judge