

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

FILED

December 30, 1996

**Cecil W. Crowson
Appellate Court Clerk**

AT NASHVILLE

MAY 1996 SESSION

WILLIAM D. ARENDALL,

Appellant,

VS.

STATE OF TENNESSEE,

Appellee.

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C.C.A. # 01C01-9510-CR-00341

DAVIDSON COUNTY

Hon. J. Randall Wyatt, Jr., Judge

(Habeas Corpus)

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OPINION FILED: _____

AFFIRMED

GARY R. WADE, JUDGE

OPINION

The petitioner, William D. Arendall, appeals from the trial court's denial of his petition for a writ of habeas corpus. The petitioner presents two issues for our review: (1) whether the trial court erred by dismissing the petition without a hearing on grounds of previous determination by the chancery court; and if so (2) whether the Tennessee Department of Correction may rescind custodial parole after the expiration of the sentence.

Because the petitioner is not eligible for habeas corpus relief, we affirm the judgment of the trial court.

The petitioner was sentenced to consecutive terms of thirty and twenty years, effective in 1974, and one consecutive term of three years, effective in 1986. All three of these state sentences were to be served after the petitioner finished serving a prior, federal sentence. The Tennessee Department of Correction (TDOC) set the petitioner's parole dates separately for each sentence using guidelines for custodial parole set forth in Howell v. State, 569 S.W.2d 428 (Tenn. 1978) (although the Howell case was decided four years after the petitioner's sentence became effective and two years after the petitioner began service on the first sentence of thirty years). The original parole date on the thirty-year sentence was set for 1986. At that point the petitioner was granted custodial parole on the thirty-year sentence and began to serve his twenty-year sentence. The thirty-year sentence expired in 1989.

In 1994, five years after the expiration of the thirty-year sentence, the TDOC recalculated the petitioner's parole date for his twenty-year sentence. Determined without the benefit of custodial parole guidelines in Howell, the result

was a combined parole date for a fifty-year sentence. This new parole date was later in time than the original; thus, the effect of the recalculation was a longer period of incarceration. The petitioner was granted custodial parole on the twenty-year sentence and had begun serving his remaining three-year sentence at the time of the recalculation.

The petitioner first filed a pro se petition for a declaratory judgment in Chancery Court of Davidson County in which he objected to the calculation of his release eligibility date. The state moved to dismiss the suit in chancery court on the basis that the petitioner had failed to state a claim on which declaratory relief could be granted. The chancery court dismissed the petition and the petitioner appealed. While awaiting the Court of Appeals' decision, which later affirmed the chancery judgment,¹ the petitioner filed this petition for a writ of habeas corpus in the Davidson County Criminal Court, claiming his sentence had expired. The state moved to dismiss the habeas corpus petition claiming that (1) the issue had already been decided in chancery court and (2) the court of appeals had jurisdiction over issues concerning sentence calculations. The criminal court heard arguments on the motion and dismissed the petition without an evidentiary hearing.

The scope of habeas corpus review is narrow. The writ of habeas corpus, codified at Tenn. Code. Ann. §§ 29-21-101 to -130, will issue only in the case of a void judgment or to free a prisoner held in custody after his term of imprisonment has expired. State ex rel. Hall v. Meadows, 389 S.W.2d 256, 259 (Tenn. 1965). Unlike the post-conviction petition, the purpose of a habeas corpus petition is to contest void, and not merely voidable, judgments. See State ex rel.

¹William D. Arendall v. Christine Bradley, No. 01A01-9502-CH-00049 (Tenn. Ct. App., at Nashville, August 18, 1995).

Newsom v. Henderson, 424 S.W.2d 186, 189 (Tenn. 1968). "A petitioner cannot collaterally attack a facially valid conviction in a habeas corpus proceeding." Potts v. State, 833 S.W.2d 60, 62 (Tenn. 1992). Habeas corpus action may be brought at any time while the petitioner is incarcerated to contest an illegal confinement. Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993).

The petitioner claims that his twenty-year sentence has now expired; he insists that his thirty-year sentence has also expired. He does not, however, assert that he is eligible for immediate release from custody. It is well established law that habeas corpus relief is available only to persons eligible for immediate release from custody. Taylor v. Morgan, 909 S.W.2d 17, 20 (Tenn. Crim. App. 1995); Tenn. Code Ann. § 29-21-122.² A prisoner does not qualify for habeas corpus relief simply because one of several consecutive sentences has expired. Rather, he must wait until he contends that his total term of custody has expired. State ex rel. Dickens v. Bomar, 381 S.W.2d 287, 289 (Tenn. 1964); Taylor, 909 S.W.2d at 20; Solomon v. State, 529 S.W.2d 743, 747 (Tenn. Crim. App. 1975); Pulley v. Hunt, 440 S.W.2d 622, 623 (Tenn. Crim. App. 1968).

The petitioner makes the following argument:

[H]abeas corpus relief is appropriate in this case. Should appellant's custodial parole date be reinstated[,] the thirty (30) year sentence would have expired in 1992. A petition for a writ of habeas corpus is appropriate if the inmate's sentence of imprisonment has expired. Mark D. Archer v. State, 851 S.W.2d 157 (Tenn. 1993).

The holding in Archer does mandate habeas corpus relief when "a defendant's sentence of imprisonment or other restraint has expired." Archer v. State, 851

²"The party detained shall be remanded to custody [w]here the time during which such party may be legally detained has not expired." Tenn. Code Ann. § 29-21-122 (b)(2).

S.W.2d at 164. This language, however, does not mean that a prisoner may be granted habeas corpus relief on an individual sentence while continuing to serve other sentences. Taylor clearly stands for the proposition that "[t]he sole relief available under Tennessee's habeas corpus statute is discharge from custody." 909 S.W.2d at 20. Because the petitioner was not eligible for discharge from custody at the time he filed his petition, he is not entitled to relief.

We also observe that the petitioner has claimed that his sentence has been miscalculated. While courts may consider whether undisputed sentence credits entitle the petitioner to habeas corpus relief, they may not consider the disputed credits. Rowell v. Dutton, 688 S.W.2d 474 (Tenn. Crim. App. 1985). Generally speaking, once a prisoner is in the custody of the Department of Correction, time credits and parole dates, being internal departmental matters, are inappropriate considerations in a habeas corpus proceeding. See Carroll v. Raney, 868 S.W.2d 721, 723 (Tenn. Crim. App. 1993). The validity of any sentence reduction credits must be addressed through the avenues of the Uniform Administrative Procedures Act. Tenn. Code Ann. §§ 4-5-101 to 4-5-324; State v. David N. Kuntz, No. 01C01-9101-CR-00019, (Tenn. Crim. App., at Nashville, June 14, 1991).

Whether the post-judgment relief is sought by writ of mandamus or any other method, the trial court should generally defer to the Department of Correction as to parole dates and sentencing credit issues. See Jerry Buford v. State, No. 03C01-9201-CR-00001, (Tenn. Crim. App., at Knoxville, July 15, 1992). Appeals from rulings by the board under the Administrative Procedures Act are directed first to chancery court; the Court of Criminal Appeals has no jurisdiction in this matter. Slagle v. Reynolds, 845 S.W.2d 167, 169 (Tenn. 1992).

We affirm the trial court's dismissal of the petition for a writ of habeas corpus.

Gary R. Wade, Judge

CONCUR:

Joseph M. Tipton, Judge

William M. Barker, Judge