

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

FEBRUARY 1997 SESSION

FILED
Feb. 27, 1997
Cecil Crowson, Jr.
Appellate Court Clerk

CURTIS GOULDIN,)
)
Appellant,)
)
VS.)
)
STATE OF TENNESSEE,)
)
Appellee.)

NO. 02C01-9605-CR-00145

SHELBY COUNTY

Hon. Chris Craft, Judge

(Petition for Writ of Habeas Corpus)

FOR THE APPELLANT:

CURTIS GOULDIN, *pro se*
Lake County Correctional Facility
Route #1, P.O. Box 330
Tiptonville, TN 38079

FOR THE APPELLEE:

CHARLES W. BURSON
Attorney General and Reporter

ELIZABETH T. RYAN
Assistant Attorney General
450 James Robertson Parkway
Nashville, TN 37243-0493

JOHN W. PIEROTTI, JR.
District Attorney General

DAVID SHAPIRO
Assistant District Attorney General
Suite 301
201 Poplar Avenue
Memphis, TN 38103

OPINION FILED: _____

AFFIRMED

**JOE G. RILEY,
JUDGE**

OPINION

The petitioner, Curtis Gouldin, appeals the order of the Criminal Court of Shelby County denying his petition for writ of habeas corpus. His sole contention is that he received an illegal sentence after he pled guilty to two (2) counts each of aggravated rape and robbery with a deadly weapon. The trial court treated the petition as one for post-conviction relief and dismissed the petition on the grounds that (1) it was time-barred, and (2) any non-jurisdictional error was waived by the guilty plea. We affirm.

In May 1984, Gouldin pled guilty to two (2) counts of aggravated rape and two (2) counts of robbery with a deadly weapon. He was sentenced under the Criminal Sentencing Reform Act of 1982 as a Range II offender. In November 1995, he filed this petition claiming that he had no prior convictions and should have been sentenced as a Range I offender. Thus, he contends that his sentence is illegal and void on its face.

I

The habeas corpus petition was properly dismissed. T.C.A. § 29-21-105 requires that the application for writ of habeas corpus 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.” Gouldin is incarcerated in the Lake County Correctional Facility. Consequently, the petition was improperly filed in Shelby County. See State ex rel. Leach v. Avery, 215 Tenn. 425, 387 S.W.2d 346 (1964); Leonard v. Crim. Ct. of Davidson County, 804 S.W.2d 891 (Tenn. Crim. App. 1990).

Furthermore, habeas corpus relief in criminal cases is limited to those instances where the petitioner’s conviction is void or he is being held beyond the expiration of his sentence. Archer v. State, 851 S.W.2d 157 (Tenn. 1993). Gouldin cannot establish that the judgments convicting him are void or that his sentence

terms have expired. The petition for habeas corpus has no merit.

II

The trial court treated the petition as one for post-conviction relief. T.C.A. § 40-30-205(c) provides that a habeas corpus petition may be treated as a petition for post-conviction relief whenever appropriate. Gouldin entered a plea of guilty in May 1984. The statute of limitations for post-conviction relief ran on July 1, 1989. Abston v. State, 749 S.W.2d 487 (Tenn. Crim. App. 1988). The petition raises no exceptions for tolling the statute. As a result, the post-conviction petition is time-barred.

Additionally, even if the petition were not time-barred, there is no merit to Gouldin's argument. We need not reach the actual merits as to whether Gouldin was properly classified as a Range II offender. A defendant can enter a plea of guilty pursuant to a plea agreement and be sentenced to a higher range of classification than that which would ordinarily be imposed. State v. Mahler, 735 S.W.2d 226 (Tenn. 1987). Gouldin entered a knowing and voluntary plea of guilty to be sentenced as a Range II offender. As such, he waived any irregularity or defect in the proceedings. See State v. Wallen, 863 S.W.2d 34 (Tenn. 1993).

The judgment of the trial court is AFFIRMED.

JOE G. RILEY, JUDGE

CONCUR:

**_____
JOE B. JONES, PRESIDING JUDGE**

**_____
JOHN H. PEAY, JUDGE**