

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

NOVEMBER 1996 SESSION

FILED
January 16, 1997
Cecil W. Crowson
Appellate Court Clerk

ELWOOD DEWAYNE HOWARD,)
)
Appellant,)
)
VS.)
)
DAVID MILLS, Warden,)
)
Appellee.)

C.C.A. NO. 01C01-9603-CC-00099
HICKMAN COUNTY
HON. HENRY DENMARK BELL,
JUDGE
(Habeas corpus)

FOR THE APPELLANT:

FOR THE APPELLEE:

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OPINION FILED: _____

AFFIRMED

JOHN H. PEAY,
Judge

OPINION

The petitioner filed for a writ of habeas corpus, alleging that his 1984 convictions for felony murder and two counts of armed robbery are void due to an unconstitutional jury instruction on reasonable doubt. His petition also alleges that he received ineffective assistance of counsel on direct appeal. The court below summarily dismissed the petition, and the petitioner now appeals. We affirm the judgment below.

Our Supreme Court has stated that

Habeas corpus relief is available in Tennessee only 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). The petitioner does not claim that his sentences have expired. His claims that the jury instruction on reasonable doubt was unconstitutional and that he received ineffective assistance of counsel do not cause to appear "upon the face of the judgment" that the convicting court was without jurisdiction. Therefore, his petition does not meet the criteria for habeas corpus relief.

The court below noted correctly that the petition does state grounds for relief cognizable under the post-conviction act, T.C.A. § 40-30-201 et seq. However, the petitioner was convicted in Davidson County, Tennessee. The petition was filed in Hickman County, Tennessee, where the petitioner currently resides at Turney Center. Accordingly, as held below, the petition was filed in the wrong county. See T.C.A. § 40-30-204(a). Summary dismissal was therefore proper. T.C.A. § 40-30-206(b).

No error having been committed by the court below, the judgment dismissing the petition is affirmed.

JOHN H. PEAY, Judge

CONCUR:

DAVID H. WELLES, Judge

JERRY L. SMITH, Judge