

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

OCTOBER 1996 SESSION

FILED
March 13, 1997
Cecil W. Crowson
Appellate Court Clerk

BOBBY BLACKMON,)
)
 Appellant)
)
 V.)
)
 JACK MORGAN, WARDEN)
 STATE OF TENNESSEE)
)
 Appellee.)
)
)

No. 01C01-9512-CR-00437

DAVIDSON COUNTY

HON. SETH NORMAN,
JUDGE

(Habeas Corpus)

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(At hearing only)

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OPINION FILED: _____

AFFIRMED

William M. Barker, Judge

OPINION

The appellant, Bobby Blackmon, appeals the dismissal by the Davidson County Criminal Court of his petition for writ of habeas corpus. For the reasons contained herein, we affirm the dismissal of appellant's petition.

In November of 1970, appellant was sentenced to a term of life imprisonment for felony murder and a concurrent ten (10) year sentence for armed robbery. Appellant escaped from prison in 1973 and was not apprehended until 1983. In 1984, he was found guilty of escape and received a sentence of two (2) to five (5) years. See State v. Blackmon, 701 S.W.2d 228 (Tenn. Crim. App. 1985). On April 9, 1989, appellant was paroled on his life sentence. He was then permitted to begin service of the escape sentence. On November 6, 1989, appellant was paroled on the escape conviction and released into the community. The escape sentence purportedly expired on February 13, 1992.¹ He remained on parole for the life sentence.

In 1993 appellant was arrested for drug charges in Sumner County. As a result, a parole revocation warrant was issued and appellant was subsequently incarcerated at Middle Tennessee Reception Center. According to appellant's brief, the drug charges in Sumner County are unresolved and the Board of Pardons and Paroles has not held a hearing on the parole revocation warrant.

Appellant filed a *pro se* petition seeking habeas corpus relief on December 28, 1994 asserting that his sentence had expired and he was being illegally restrained. Counsel was appointed and the trial court conducted a brief hearing on April 28, 1995. No evidence was presented at the hearing. The trial court heard a brief summary of appellant's argument and took the petition under advisement pending the submission of authority supporting appellant's position. No authority was submitted after more

¹The dates specifying appellant's parole, permission to serve the escape sentence and expiration of the escape sentence are merely assertions by the appellant in his brief. We find nothing in the record to substantiate those dates. However, we note that the State did not contest these dates and relied upon them in its brief as well.

than two months and the trial court dismissed the petition. In its order, the trial court stated that the appellant's proof revolved around the computation of several sentences and a violation of parole. It held that matters such as this are determined by the Uniform Administrative Procedures Act, citing Carroll v. Raney, 868 S.W.2d 721 (Tenn. Crim. App. 1993).

A petition for habeas corpus relief is proper only if the judgment being attacked is void on its face or if the sentence has expired and the petitioner is being held illegally. See Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993); Passarella v. State, 891 S.W.2d 619, 626-27 (Tenn. Crim. App. 1994). Thus, if the appellant is being held illegally beyond the expiration of his sentence, habeas corpus relief would be in order. However, we do not find any merit to appellant's arguments in that regard.

Appellant first contends that the trial court violated the requirement that habeas corpus petitions be given the highest priority of any pleading and to act upon such petitions "instanter." See Norton v. Everhart, 895 S.W.2d 317, 322 (Tenn. 1995) and Tenn. Code Ann. §29-21-108 (1980). Appellant filed his petition on December 28, 1994 and a hearing was held on April 28, 1995, a delay of four months. However, due to appellant's counsel's failure to file authority, the petition was not ruled upon until July 10, 1995. It is true that the court in Norton held that a four month delay was not in conformity with the duty imposed on the trial court. Id. However, the court noted that such delay resulted in "disastrous consequences" for the petitioner in that case because it deprived him of the remedy to file a writ of certiorari. Id. In contrast, appellant has not demonstrated any prejudice or "disastrous consequences" as a result of the delay. Moreover, appellant's attorney was responsible in part for the delay and such inaction is attributed to the appellant. This issue is without merit.

We next address the appellant's life sentence and his contention that the Board of Pardons and Paroles ("Board") expired his life sentence. His argument hinges on the language of the escape statute in effect at the time of his conviction on that crime. That language provides that a sentence for escape must "commence . . . after the

expiration of the original term.” See Tenn. Code Ann. §39-5-702 (repealed 1989). Appellant asserts that when he was paroled on his life sentence, the Board permitted him to serve his escape sentence. Based upon the statutory language, appellant argues that in permitting him to begin service of the escape sentence, the Board effectively expired his life sentence. As a further consequence, when the escape sentence expired on February 13, 1992, appellant contends that he was no longer under the power of the Board and it had no authority to issue a warrant for parole revocation in 1993. Albeit a creative one, the argument must fail.

Appellant was sentenced to a term of life imprisonment in 1970. The Board, in its discretion, granted him parole on this sentence in 1989. Contrary to appellant’s contention, the Board could not “expire” his life sentence, directly or impliedly by its actions. A life sentence does not expire, but continues as long as the person lives, or until a pardon has been granted. Rucker v. State, 556 S.W.2d 774, 776 (Tenn. Crim. App. 1977). See also Tenn. Code Ann. §40-28-125(b) (1990) (stating that parolees with a life sentence may not be given a final discharge from parole). Furthermore, the mere granting of parole on the life term did not terminate or expire the life sentence. Rucker, 556 S.W.2d at 776. Therefore, appellant’s life sentence will never expire and any claim of illegal restraint based on this sentence is meritless. Absent a pardon from the governor, appellant is subject to supervision or incarceration by the Department of Correction for a lifetime.

Appellant is also unable to assert a claim of illegal restraint based upon the expiration of his escape sentence. There is nothing in the record to indicate conclusively when the appellant began serving this sentence or when it would have expired. Appellant contends that his sentence for the escape conviction expired on February 13, 1992. In support of this, he attached a computer printout to his petition from the Department of Correction purportedly reflecting the date of expiration of the sentence. However, this is not a sworn statement. Neither was it authenticated at the hearing as a reliable document. Nor was an affidavit from the Department of

Correction attesting to such facts submitted at the hearing. We may not presume facts that are not supported by the record. Furthermore, the expiration of appellant's escape sentence is irrelevant; he is not entitled to release. Appellant remains under a life sentence until his death and is subject to supervision by the Department of Correction. This claim presents no basis for habeas corpus relief.²

Any claims the appellant has regarding the drug charges in Sumner County and his parole revocation hearing do not constitute grounds for habeas corpus relief. Appellant contends that the drug charges in Sumner County have not yet been resolved and also that he has never received a hearing on the parole revocation warrant. We note that appellant's Sumner County conviction for possession of cocaine with intent to sell has been affirmed on direct appeal to this Court. See State v. Bobby Vincent Blackmon, No. 01C01-9508-CR-00258 (Tenn. Crim. App. at Nashville, January 30, 1997). Any claims that appellant has regarding a parole revocation hearing have not been substantiated in the record. Regardless, the alleged delay in conducting a hearing, if true, would not entitle appellant to relief from his sentence. Therefore, appellant has failed to present any claim warranting his release from custody, the only remedy available in a habeas corpus petition. See Carroll v. Raney, 868 S.W.2d 721, 722 (Tenn. Crim. App. 1993) (citations omitted).

In summary, appellant is unable to demonstrate that he is being held beyond the expiration of his life sentence. Also, due to unreliable documentation, we are unable to determine if appellant is being held beyond the expiration of his sentence for escape. Finally, any claim regarding the absence of a parole revocation hearing is unsubstantiated and presents no ground for habeas corpus relief. Therefore, appellant is not entitled to be released from custody. The judgment of the trial court dismissing the petition for the writ is affirmed.

²Any complaint that appellant has with the manner of his sentence computation or any credit he may be entitled to for time served is not a proper consideration for this Court in a habeas corpus petition. Rather, appellant should pursue an action under the Uniform Administrative Procedures Act. See Brown v. State, 928 S.W.2d 453, 457 (Tenn. Crim. App. 1996) and Carroll v. Raney, 868 S.W.2d 721, 723 (Tenn. Crim. App. 1993).

William M. Barker, Judge

Joe B. Jones, Presiding Judge

J. Steven Stafford, Special Judge