

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

JANUARY 1997 SESSION

FILED

February 20, 1997

Cecil W. Crowson
Appellate Court Clerk

TERRY MERRELL,)
)
 Appellant,)
)
 VS.)
)
 STATE OF TENNESSEE,)
)
 Appellee.)

No. 01C01-9604-CR-00147

DAVIDSON COUNTY

Hon. J. Randall Wyatt, Jr., Judge

(Petition for Writ of Habeas Corpus)

FOR THE APPELLANT:

THURMAN T. McLEAN, Jr.
Dale, Rosenberg & McLean
221 Fourth Avenue, N.
Fifth Floor
Nashville, TN 37219

FOR THE APPELLEE:

CHARLES W. BURSON
Attorney General and Reporter

LISA A. NAYLOR
Assistant Attorney General
450 James Robertson Parkway
Nashville, TN 37243-0493

VICTOR S. JOHNSON, III
District Attorney General

KATRIN NOVAK MILLER
Assistant District Attorney General
Washington Square, Suite 500
222 Second Avenue, N.
Nashville, TN 37201-1649

OPINION FILED: _____

AFFIRMED

**JOE G. RILEY,
JUDGE**

OPINION

The petitioner, Terry Merrell, appeals the order of the Criminal Court of Davidson County dismissing his petition for writ of habeas corpus. He is presently serving a four (4) year sentence for aggravated assault. After a hearing, the trial court found that he was in the lawful custody of the Tennessee Department of Correction and dismissed his petition. We affirm.

I

Merrell claims that T.C.A. § 40-35-501 creates indeterminate sentences in violation of T.C.A. § 40-35-211, which prohibits indeterminate sentences. His argument rests on the fact that the Board of Paroles has the power to grant or deny parole upon a defendant's eligibility for release pursuant to T.C.A. § 40-35-501. Therefore, Merrell contends that his sentence is indeterminate and, as a result, void on its face.

Although T.C.A. § 40-35-211 prohibits indeterminate sentences, the sentence imposed upon Merrell is not indeterminate. The mere fact that the Board of Paroles may grant or deny parole does not convert a determinate sentence into an indeterminate sentence. Parole does not cause the sentence to expire or terminate but is merely a conditional release. See Doyle v. Hampton, 207 Tenn. 399, 340 S.W.2d 891 (1960). This issue is without merit.

II

Merrell's second argument is that the authority to determine the length of a sentence is exclusively a judicial function. He contends the Board of Paroles is vested with the power to grant or deny parole; therefore, the Board is performing a judicial function in violation of the separation of powers doctrine. The fact that the Board of Paroles determines the granting or denial of parole does not violate the separation of powers doctrine. The authority to grant paroles is not judicial in nature but is administrative. Woods v. State, 130 Tenn. 100, 169 S.W. 558 (1914). Accordingly, there is no violation of the separation of powers doctrine. This issue has no merit.

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). Merrell cannot establish that the judgment convicting him is void or that his sentence term has expired. Therefore, we find that the petition for writ of habeas corpus was properly dismissed. The judgment of the trial court is AFFIRMED.

JOE G. RILEY, JUDGE

CONCUR:

JOHN H. PEAY, JUDGE

DAVID H. WELLES, JUDGE