

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

AUGUST 1996 SESSION

FILED
Jan 21, 1997
Cecil Crowson, Jr.
Appellate Court Clerk

WILLIAM C. MILLER, * C.C.A. # 02C01-9509-CC-00278
Appellant, * LAKE COUNTY
VS. * Hon. Joe G. Riley, Jr., Judge
ROBERT CONLEY, WARDEN, * (Habeas Corpus)
Appellee. *

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OPINION FILED: _____

AFFIRMED

GARY R. WADE, JUDGE

OPINION

The petitioner, William C. Miller, appeals the trial court's denial of habeas corpus relief. The issue presented for review is whether the trial court erred by entering a summary dismissal. We find no error and affirm the judgment.

On July 12, 1995, the petitioner, an inmate at the Lake County Regional Correctional Facility serving a Range II, seven-year sentence, filed this petition alleging that he was not properly in the custody of the Tennessee Department of Correction. While conceding that he had been under a Community Corrections sentence and had a prior federal offense, he insists that he was never actually ordered to serve his term in the state prison. The petitioner claimed that the warden had misused his authority by his continued incarceration of the defendant.

The trial court found as follows:

The amended judgments reveal that the community corrections sentence [of seven years] was indeed revoked to be served concurrently with the federal sentence. The handwritten notations on the judgments show that the community corrections violation was sustained with the "sentence into effect" to run concurrently with the federal sentence. Credits of 1,026 days were awarded. Accordingly, petitioner is properly within the custody and control of the Tennessee Department of Correction serving his original sentences.

In order to obtain relief through a writ of habeas corpus, the petition must establish that the judgment of conviction is void or the sentence has expired. Ussery v. Avery, 432 S.W.2d 656 (Tenn. 1968). Unlike the post-conviction petition, the purpose of habeas corpus is to contest void, and not merely voidable, judgments. See State ex rel. Newsom v. Henderson, 424 S.W.2d 186, 189 (Tenn. 1968). If brought to challenge an illegal confinement, the habeas corpus action may be brought at anytime while the petitioner is incarcerated. Archer v. State, 851

S.W.2d 157, 164 (Tenn. 1993).

As we understand this petition, the petitioner does not complain because he is incarcerated. His contention is that the judgment provided for a workhouse sentence rather than one with the Department of Correction. That is so. As the trial court found, however, the amended judgments clearly establish a violation of the terms of Community Corrections. The trial court ordered the sentence "into effect" and gave credit for time served. The sentence was ordered to be served concurrently with the federal sentence.

It is true that the sentences could and perhaps should have been more clearly set out in the judgments. It takes a review of the entire document to determine the intent of the sentencing judge. Yet the petitioner has not established that the three judgments of conviction at issue are void. Further, the 1991 sentences, which provided for a term of seven years, had not expired at the time the trial court ruled on this petition.

Finally, had the petitioner claimed that his sentence had been miscalculated, a petition for habeas corpus relief would not have been the forum to consider disputed sentence credits. Rowell v. Dutton, 688 S.W.2d 474 (Tenn. Crim. App. 1985). Generally speaking, once a petitioner is in custody of the Department of Correction, time credits and parole dates, being internal departmental matters, are inappropriate considerations in this type of a 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 -324; State v. David N. Kuntz, No. 01C01-9101-CR-00019 (Tenn. Crim. App., at Nashville, June 14,

1991).

Accordingly, the judgment is affirmed.

Gary R. Wade, Judge

CONCUR:

William M. Barker, Judge

Jerry L. Smith, Judge