

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

JUNE 1997 SESSION

FILED
July 29, 1997
Cecil Crowson, Jr.
Appellate Court Clerk

IVAN S. MACK,

Appellant,

VS.

DON SUN[D]QUIST, et al.,

Appellee.

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C.C.A. NO. 03C01-9605-CC-00208

MORGAN COUNTY

HON. E. EUGENE EBLEN,
JUDGE

(Habeas corpus)

FOR THE APPELLANT:

FOR THE APPELLEE:

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OPINION FILED: _____

AFFIRMED

JOHN H. PEAY,
Judge

OPINION

The petitioner was convicted in 1982 in Knox County of being a habitual criminal and sentenced to life. He filed a petition for writ of habeas corpus alleging that he is entitled to relief because of the 1989 repeal of the habitual criminal statute. The court below denied relief holding that “the law does not provide for nor requires [sic] that a defendant already sentenced under existing sentencing laws is entitled to have that earlier sentence modified or overturned in light of subsequent sentencing law modifications.” We affirm.

This Court has previously held that the 1989 Sentencing Reform Act which repealed the habitual criminal statute has no effect on defendants ordered to serve life sentences prior to November 1, 1989, noting that “the act which repealed the habitual criminal statute contains the following language: <[t]his act shall not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before its effective date.’” State v. Russell, 866 S.W.2d 578, 581 (Tenn. Crim. App. 1991). See also State ex rel. Stewart V. McWherter, 857 S.W.2d 875, 877 (Tenn. Crim. App. 1992) (“the changes in sentencing wrought by the 1989 Sentencing Act or by any other act after the petitioner’s sentences were imposed would not affect those sentences because they were penalties already incurred.”) Accordingly, the petitioner’s conviction is not void, nor has his sentence expired. He is therefore not eligible for habeas corpus relief. Passarella v. State, 891 S.W.2d 619, 626 (Tenn. Crim. App. 1994).

The judgment below is affirmed.

JOHN H. PEAY, Judge

CONCUR:

JOSEPH M. TIPTON, Judge

J. CURWOOD WITT, JR., Judge