

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

FEBRUARY 1998 SESSION

<p>FILED</p> <p>April 15, 1998</p> <p>Cecil Crowson, Jr. Appellate Court Clerk</p>
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KENNETH J. HALL,)
)
Appellant,) No. 03C01-9709-CR-00342
)
vs.) Hawkins County
)
) Honorable James E. Beckner, Judge
STATE OF TENNESSEE,)
)
Appellee.) (Post-Conviction)
)

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OPINION FILED: _____

AFFIRMED

WILLIAM B. ACREE, JR.
SPECIAL JUDGE

OPINION

The petitioner, Kenneth J. Hall, appeals as of right the trial court's dismissal of his petition for post-conviction relief.

On November 4, 1994, the petitioner entered pleas of guilty to reckless endangerment and to four misdemeanors. The controlling sentence was a two year sentence in the Tennessee Department of Corrections concurrent with a sentence to be received in the United States District Court. Thereafter, the petitioner was sentenced to 57 months for the federal crime, but for reasons which are not explained in the record, that sentence was consecutive to the state sentence. It appears that efforts were made in the state court to allow the state sentence to be served concurrently with the federal sentence, but those efforts were unsuccessful. The record reflects the following sequence of events:

November 4, 1994, guilty plea and entry of judgment;
August 7, 1995, entry of amended judgment for reckless endangerment¹;
July 22, 1996, petition for post-conviction relief filed;
July 23, 1996, entry of order setting aside judgment²;
August 5, 1996, entry of new judgment;
February 21, 1997, order denying the petition for post-conviction relief.

The ground for the petition for post-conviction relief was ineffective assistance of counsel. The petitioner contends it was the fault of his trial counsel that the state sentence and federal sentence were consecutive rather than concurrent. The trial court dismissed the petition without an evidentiary hearing and found that the petitioner's trial attorney was not ineffective.

In this Court, the petitioner contends that the record establishes that his trial counsel was ineffective or alternatively, the matter should be remanded for an evidentiary hearing. On the other hand, the State contends that the petition for post-conviction relief is barred by the statute of the limitations.

We find that the petition is barred by the statute of limitations.

¹Amended judgments for the misdemeanor charges were entered on October 13, 1995.

²The trial court ordered that "the judgment be set aside and voided and that a new judgment be entered sentencing the defendant on his original plea of guilty in accordance with the plea bargain which was agreed to by the State of Tennessee to two years as a Range 1 Standard Offender concurrent with federal case CR-94-88."

On November 4, 1994, when the petitioner entered pleas of guilty, the statute of limitations applicable to post-conviction proceedings was three years. T.C.A. §40-30-102 (Repealed 1995). In 1995, the legislature reduced the statutory period for filing post-conviction petitions from three years to one year. T.C.A. §40-30-202 (a). The new 1995 Post-Conviction Act governs this petition and all petitions filed after May 10, 1995. Thus, the petitioner had until May 10, 1996 to file this petition. It was not filed until July 22, 1996.

The petitioner argues that he had one year from August 7, 1995, the date of entry of the amended judgment, to file the petition. The State argues that except for clerical mistakes, the trial court had no jurisdiction to amend the judgment, and the amendment was a nullity.

As a general rule, a trial court's judgment becomes final 30 days after its entry unless a timely notice of appeal or a specified post trial motion is filed. State v. Moore, 814 S.W.2d 381, 382 (Tenn.Crim.App. 1991); State v. Pendergrass, 937 S.W.2d 834, 837 (Tenn. 1996). The authority of a trial court to rule on motions in a lawsuit expires 30 days after the entry of judgment. State v. Lock, 839 S.W.2d 436,439 (Tenn.Crim.App. 1992). Once a trial court loses jurisdiction, it generally has no power to amend its judgment. Moore, 914 S.W.2d 382; Pendergrass, 937 S.W.2d., at 837. Indeed, it is well settled that a judgment beyond the jurisdiction of a court is void. Brown v. Brown, 198 Tenn. 600, 281 S.W.2d 492, 497 (1955); Pendergrass, 937 S.W.2d, at 837.

Under Rule 36, T.R.Cr.P., a trial court retains limited jurisdiction to correct clerical mistakes in judgments and errors arising from oversight or omission. Id. However, that is not to say that the correction of a clerical mistake confers jurisdiction where it did not otherwise exist. In Pendergrass, the defendant was indicted for the sale of drugs. She moved to suppress the items seized in the search of her residence on constitutional grounds. Her motion was overruled, and she then entered a plea of guilty intending to reserve the right to appeal a certified question of law that was dispositive of the case. However, the certified question was not inserted into the judgment. More than 30 days after the judgment became final, the trial court entered an amended judgment certifying the question of law. The Supreme Court held that the amended order was not the mere correction of a clerical error, but rather an attempt to confer jurisdiction on the Court of Appeals to hear the certified question of law. The Court held that the

trial court lost jurisdiction of the case 30 days after the entry of the initial judgment and had no authority to enter the amended judgment.

The holding in Pendergrass is dispositive of this case.

The judgment in this case became final on December 4, 1994, which was 30 days after the guilty pleas. After that date, the trial court had no further jurisdiction in the case except under Rule 36 T.R.Cr.P.. However, correction of a judgment pursuant to Rule 36 does not extend the statutory period for filing a petition for post-conviction relief.

We hold that the petition was not timely filed, and the appeal is dismissed.

WILLIAM B. ACREE, JR., SPECIAL JUDGE

CONCUR:

JERRY L. SMITH, JUDGE

THOMAS T. WOODALL, JUDGE