

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

NOVEMBER 1996 SESSION

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| <p>FILED</p> <p>December 10, 1998</p> <p>Cecil Crowson, Jr. Appellate Court Clerk</p> |
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BARRY WINFRED RITCHIE,)
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 Appellant,)
)
 v.)
)
 STATE OF TENNESSEE,)
)
 Appellee.)

No. 03C01-9601-CC-00029
 Bledsoe County
 Honorable James Curtis Smith, Judge
 (Habeas Corpus -- aggravated rape and
 armed robbery)

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 (AT TRIAL)

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 (ON APPEAL)

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OPINION FILED: _____

REVERSED AND REMANDED

Joseph M. Tipton
 Judge

OPINION

The petitioner, Barry Winfred Ritchie, appeals as of right from the denial of his petition for habeas corpus relief by the Bledsoe County Circuit Court without a hearing. The petitioner is presently in the custody of the Department of Correction serving an effective sentence of life imprisonment for his 1981 convictions for aggravated rape and armed robbery. On appeal, the petitioner contends that his convictions are void because the convicting court lacked the proper subject matter jurisdiction to try him. Specifically, the petitioner contends that (1) the issue of subject matter jurisdiction can be properly raised by a petition for habeas corpus, (2) the convicting court lacked subject matter jurisdiction over the crimes, and (3) the State of Tennessee ceded jurisdiction over the lands where the crimes were committed to the federal government. We reverse and remand the case for the trial court to hold an evidentiary hearing to make findings of fact and rulings consistent with this opinion.

The petitioner and James William Massengale were jointly tried and convicted in the Hamilton County Criminal Court for aggravated rape and armed robbery. Each received sentences of life imprisonment and ten years. On appeal, this court affirmed the convictions. State v. James William Massengale & Barry Winfred Ritchie, No. 780, Hamilton County (Tenn. Crim. App. Mar. 1, 1983), app. denied (Tenn. June 27, 1983). The petitioner and Massengale separately filed petitions for post-conviction relief that were denied. State v. James William Massengale, No. 922, Hamilton County (Tenn. Crim. App. Oct. 6, 1987), app. denied (Tenn. Dec. 12, 1988); Barry Winfred Ritchie v. State, No. 946, Hamilton County (Tenn. Crim. App. July 23, 1986), app. denied (Tenn. Sept. 29, 1986).

In his pro se petition for habeas corpus, the petitioner does not dispute that the crimes took place but rather argues that the trial court lacked jurisdiction to try

and convict him. The petition alleges that the crimes took place on the property of the Tennessee Valley Authority and that the federal courts have exclusive jurisdiction over any offenses committed on the property. The petitioner submitted the following supplemental documents: (1) a map placing the offenses on a tract of land designated as CR 1418, (2) a set of deeds conveying the tract to the United States, specifically the Tennessee Valley Authority (TVA), in fee simple on May 2, 1938, and (3) an easement assigning all “rights, privileges, and powers” over the tract from Hamilton County, Tennessee, to the City of Chattanooga on March 5, 1992. The petitioner also submitted documentation that a map showing the metes and bounds of the property was filed with the Hamilton County clerk’s office on May 2, 1938. The evidence from the original trial showed that the crimes were committed in Chattanooga, Tennessee, at a park along the bank of the Tennessee River south of the Chickamauga Dam, on the same side of the river as the Amnicola Highway, and immediately behind Chattanooga State University.

The trial court dismissed the habeas corpus petition without a hearing, relying upon Massengale v. Mills, 826 S.W.2d 122, 123 (Tenn. Crim. App. 1991). In Massengale, the petition for a writ of habeas corpus alleged that the Hamilton County Criminal Court lacked subject matter jurisdiction to try and convict Massengale because the land where the crimes had occurred had been ceded to the federal government and the federal government held exclusive jurisdiction over the land. The petition was denied on the grounds that (1) Massengale failed to show that the federal government had exclusive jurisdiction over the crimes and (2) the issue of whether the crimes occurred on property within the exclusive jurisdiction of the United States should have been raised in the trial court and could not be raised by a writ of habeas corpus. This court affirmed the denial of habeas corpus relief, holding that the trial court properly determined that it had venue at the convicting trial. Id. This court stated that it found

“nothing to indicate that Congress intended for the United States courts to have exclusive jurisdiction over matters arising on Tennessee Valley Authority property.” Id.

I.

First, the petitioner contends that the issue of subject matter jurisdiction can be raised by a petition for a writ of habeas corpus. He argues that this court erroneously held in Massengale that the issue of subject matter jurisdiction cannot be raised in a petition for a writ of habeas corpus. The state responds that the trial court properly dismissed the petition because the petitioner cannot prove his assertions without resorting to the introduction of further proof after findings of fact by the trial court, and thus, the petitioner’s convictions are not void, but merely voidable. We conclude that a claim of lack of subject matter jurisdiction is cognizable in a habeas corpus proceeding.

The constitutional right to a writ of habeas corpus is available to all citizens imprisoned or restrained of their liberty for whatever reason, absent the legislature suspending the right in the case of rebellion or invasion. Tenn. Const. Art. I, § 15. Pursuant to T.C.A. § 29-21-101, a person imprisoned or restrained of his or her liberty is entitled to seek the aid of the courts in inquiring into the reason for the imprisonment or restraint. Also, the courts are obliged to issue a writ in appropriate cases in order that further inquiry may be made if necessary. See T.C.A. §§ 29-21-108, -110. Issues of lack of subject matter jurisdiction may be raised at any time, even on appeal when not raised in the trial court. See Tenn. R. Crim. P. 12(b)(2); see, e.g., State v. Seagraves, 837 S.W.2d 615, 616 (Tenn. Crim. App. 1992) (pursuant to Rule 13(b), T.R.A.P., appellate courts have the duty to review the subject matter jurisdiction of the convicting court even if it is not raised as an issue on appeal).

Habeas corpus relief is available if the judgment is void or if a prisoner is being held in custody after his term of imprisonment has expired. See State ex rel. Hall v. Meadows, 389 S.W.2d 256, 259 (Tenn. 1965); State ex rel. Holbrook v. Bomar, 364 S.W.2d 887, 888 (Tenn. 1963). In Holbrook, the Tennessee Supreme Court held as follows:

Upon a collateral attack on a judgment of a court of general jurisdiction made by the parties or their privies, such judgment is presumed to be in all respects regular and valid, unless the record affirmatively shows that the court rendering the judgment lacked jurisdiction of the subject matter or of the person; such presumption is conclusive unless it is impeached by the record itself.

Id. at 889.

In Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993), our supreme court stated that habeas corpus relief is available only when it appears on the face of the judgment or the record of the proceedings that the convicting court was without jurisdiction or authority to sentence the defendant. Id. The court denied the petitioner habeas corpus relief, holding that the petitioner's claim that his guilty pleas were not entered knowingly, voluntarily, and understandingly rendered his convictions merely voidable, not void.

However, unlike the example in Archer, if a court has no jurisdiction over the subject matter of the criminal conviction, the defendant's conviction in that court is void. Wright v. State, 451 S.W.2d 707, 709 (Tenn. Crim. App. 1969). "If the Court rendering a judgment sought to be attacked collaterally is one of general jurisdiction, there is a presumption that nothing shall be intended to be out of its jurisdiction except that which so appears upon the face of the judgment or in the record of the case in which that judgment is rendered." Bomar v. State ex rel. Stewart, 300 S.W.2d 885, 887 (Tenn. 1957). "On collateral attack upon a judgment or decree of a court of general jurisdiction by parties or privies thereto, the rule is that such judgment or decree cannot

be questioned except for want of authority over the matters adjudicated upon; and this want of authority must be found in the record itself.” Wilkins v. McCorkle, 80 S.W. 834, 838 (Tenn. 1904).

In this case, the witnesses in the Hamilton County Criminal Court identified the specific area where the events of the crimes took place. Three separate witnesses identified the area along the bank of the Tennessee River south of the Chickamauga Dam, on the same side of the river as the Amnicola Highway, and immediately behind Chattanooga State University. The location of the crimes is affirmatively stated in the trial record.

The record shows where the events occurred, but it does not provide the status of ownership of the land. Because the crimes occurred in Hamilton County, on land open to the public, the Hamilton County Criminal Court must have presumed that it had subject matter jurisdiction over any crimes occurring there.

However, when a person is indicted for a crime in a court that lacks subject matter jurisdiction, that indictment is void. If the indictment is void, then no action by the trial court can obtain jurisdiction not granted to it by the legislature. Also, the issue of subject matter jurisdiction is not waivable by the parties. See Tenn. R. Crim. P. 12(b)(2); Seagraves, 837 S.W.2d at 618. Thus, if subject matter jurisdiction cannot be assumed or waived, any judgment by the trial court is necessarily void. There is no action over time that can change a void judgment.

In this case, if the record shows that the events occurred on land ceded to the United States, and the United States held exclusive jurisdiction over the land, then the conviction by the Hamilton County Criminal Court would be void for want of subject matter jurisdiction. Therefore, following the holdings of the Tennessee courts in Archer

and Bomar, a petition for a writ of habeas corpus is a proper vehicle for addressing this matter.

II.

Next, the petitioner argues that the Hamilton County Criminal Court did not properly determine that it had subject matter jurisdiction at the 1981 trial. The petitioner asserts that the only reference made to the jurisdiction of the court was an identification of the location of the crimes by the trial judge during jury selection. The state argues that there was a proper finding of venue by the trial court and that venue is a finding of fact that may not be disturbed in a habeas corpus proceeding. We conclude that a finding as to the location of the events of a crime does not necessarily convey subject matter jurisdiction over the crimes where no such jurisdiction exists under authority of law.

In Meighan v. U.S. Sprint Communications Co., 924 S.W.2d 632, 639 (Tenn. 1996), the Tennessee Supreme Court noted the distinction between a finding of venue and a finding of subject matter jurisdiction. The court stated that:

Subject matter jurisdiction and venue are two separate concepts. Subject matter jurisdiction concerns the authority of a particular court to hear a particular controversy. It relates to the nature of the cause of action and the relief sought. It is generally defined by the constitution or statute and conferred by the authority that organizes the courts.

....

Venue, on the other hand, is a concept based on the privilege of and convenience to the parties. It is generally not a condition precedent to the court's power, but relates instead to the appropriateness of the location of the action. While there is much debate regarding the connectedness between the two concepts, our rules of civil procedure have clearly distinguished between the two. Improper venue is a matter which is waived unless contested in the first pleading. Subject matter jurisdiction, on the other hand, cannot be waived, because it is the basis for the court's authority to act.

Id.

For subject matter jurisdiction purposes, the circuit court “is a court of general jurisdiction, and the judge thereof shall administer right and justice according to law, in all cases where the jurisdiction is not conferred upon another tribunal.” T.C.A. § 16-10-101 (1994). The circuit courts of Tennessee have original jurisdiction so long as the jurisdiction has not been conveyed to another court. Staples v. Brown, 85 S.W. 254, 255 (Tenn. 1904). Furthermore, the circuit court “has exclusive original jurisdiction of all crimes and misdemeanors, either at common law or by statute, unless otherwise expressly provided by statute or this Code.” T.C.A. § 16-10-102 (1994).

There is no doubt that the Hamilton County Criminal Court assumed that it had proper jurisdiction and venue over this case. However, a showing by the petitioner that the court lacked proper subject matter jurisdiction would render the judgment of the court void. As previously discussed, the petitioner may raise this issue in a writ of habeas corpus. Furthermore, if it becomes apparent to a court reviewing the judgment of the trial court that the trial court lacked subject matter jurisdiction, then the reviewing court shall vacate the judgment and dismiss the case. See Seagraves, 837 S.W.2d at 616.

Interestingly, the trial record reflects that the trial court told the prospective jurors that the events occurred in Hamilton County at “the rear of Chattanooga State Technical University on the Amnicola Highway, in the 4700 block, adjacent to the Chickamauga Dam on the TVA property, approximately 25 feet from the Tennessee River.” However, this does not represent a jurisdictional finding that could convey a power to the court not granted to it by law. In any event, if the federal government had exclusive jurisdiction over crimes occurring on the land where the events in the present

case occurred, then no finding by the trial court could convey the power of subject matter jurisdiction to the courts of Hamilton County.

III.

Last, the petitioner asserts that the Hamilton County Criminal Court lacked subject matter jurisdiction over crimes occurring on the Tennessee Valley Authority land because the federal government retained exclusive jurisdiction over the land. The petitioner argues that the terms of the conveyance of the property granted exclusive jurisdiction to the federal government and that this exclusive jurisdiction was accepted by the federal government. The state contends that any documentation necessary to show that exclusive jurisdiction was ceded to the federal government should not be allowed in support of the habeas corpus petition. We have already addressed the propriety of the writ of habeas corpus in this matter. We conclude that the determination of the status of the property agreement between the United States and the State of Tennessee is a finding of fact proper for the trial court and that this case should be remanded for an evidentiary hearing to determine what jurisdictional power, if any, has been transferred between the federal government and the State of Tennessee.

Under the United States Constitution, states maintain exclusive jurisdiction over all crimes committed within their territorial boundaries, except when lands are purchased by the federal government with the consent of the state for the construction and maintenance of military installations, arsenals, dockyards, and the like. U.S. Const. art. I, § 8, cl. 17 (providing that the Congress shall have the power to “exercise exclusive legislation in all cases whatsoever . . . over all places purchased by the consent of the Legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings.”). Once ceded, the lands may fall under the exclusive jurisdiction of the United States. Bowen v. Johnston,

306 U.S. 19, 23, 59 S. Ct. 442, 444 (1939). If a crime is committed within the boundaries of lands where the federal government has assumed exclusive jurisdiction, the federal courts have exclusive jurisdiction over a prosecution. Id.

The terms of the property cession agreement between the state and the federal government determine the vestige of jurisdiction. See, e.g., United States v. Heard, 270 F. Supp. 198, 200 (W.D. Mo. 1967). If the state offers to transfer its exclusive jurisdiction and the federal government accepts the offer, then the state may not prosecute crimes committed on the federal land. Id. For land cessions before February 1, 1940, the federal government is presumed to have accepted exclusive jurisdiction ceded by the state if the use of the land conferred a benefit to the United States. See Battle v. United States, 209 U.S. 36, 38, 28 S. Ct. 422, 423 (1908); Fort Leavenworth R.R. Co. v. Lowe, 114 U.S. 525, 528, 5 S. Ct. 995, 997 (1885). For lands acquired after February 1, 1940, 40 U.S.C. § 255 requires the United States to take affirmative action to assert this exclusive jurisdiction. Heard, 270 F. Supp. at 200. Whether the United States acquired exclusive jurisdiction over the lands or whether the state reserved jurisdiction depends on the terms of the consent or cession given by the state. Bowen, 306 U.S. at 23, 59 S. Ct. at 444.

When tract CR 1418 was deeded to the United States in 1938, Tennessee Code § 98 (repealed January 20, 1943) was in effect. The statutory provision provided:

That pursuant to article (1) one, section eight, clause seventeen, of the Constitution of the United States, consent to purchase is hereby given, and exclusive jurisdiction ceded to the United States, over and with respect to any lands within the limits of this state which shall be acquired by the United States for any purpose in said clause of the Constitution of the United States; said jurisdiction to continue as long as the lands are held and occupied by the United States for public purposes, reserving, however, to this state, a concurrent jurisdiction for the execution upon said lands of all process, civil or criminal, lawfully issued by the courts of the state, and not incompatible with the cession: Provided, that an accurate map or plan, and

description by metes and bounds of said lands shall be filed in the county clerk's office of the county in which the same are situated; and provided that the state reserves the right to tax all property of any railroad, or other corporation, having right of way, or location over or upon said lands.

Tennessee Code § 98 (1932) (repealed January 20, 1943).

The language of the Tennessee Code § 98 reserving the right to serve process on the ceded lands does not make the jurisdiction of the state concurrent with that of the United States. See Leavenworth, 114 U.S. at 533-34, 5 S. Ct. at 1000 (the State of Kansas conferred exclusive jurisdiction for all ceded lands under a statute almost identical to Tennessee Code § 98). But cf. Bowen, 306 U.S. at 29, 59 S. Ct. at 447 (when the terms of the cession retained civil and criminal jurisdiction, the jurisdiction of the federal government and the state was concurrent). The object of the right to serve process clause is to prevent the ceded lands from “becoming a sanctuary for fugitives from justice for acts done within the acknowledged jurisdiction of the state.” Leavenworth, 114 U.S. at 534, 5 S. Ct. at 1000. When the state cedes jurisdiction to the United States, the state may impose conditions that are not inconsistent with the purpose of the acquisition. See, e.g., Id., 114 U.S. at 542, 5 S. Ct. at 1005. As long as Congress took jurisdiction of a territory within a state ceded or purchased, the jurisdiction of the state to support and maintain its laws may not be asserted. State v. Oliver, 35 S.W.2d 396, 402 (Tenn. 1931).

In 1943, Tennessee repealed Tennessee Code § 98. In repealing the Act, the State of Tennessee did not purport that its jurisdiction over lands already purchased by the United States was regained. “After this exclusive jurisdiction had been accepted by the United States, it could not be recaptured by the action of the state alone.” See United States v. Unzeuta, 281 U.S. 138, 143, 50 S. Ct. 284, 285 (1930) (holding that Nebraska conferred exclusive jurisdiction for all ceded lands under a statute almost identical to Tennessee Code § 98, and concluding that an amendment to the ceding provisions was ineffective for previously ceded lands.) In general, the

courts of the State of Tennessee lack subject matter jurisdiction over matters occurring on federal lands purchased before 1940 without express provisions to the contrary contained in the property agreement.

A situation similar to the petitioner's was addressed by our supreme court in Gill v. State, 210 S.W. 637, 638 (Tenn. 1919). In Gill, the petitioner was convicted in state court of a crime occurring on the property of a munitions plant owned by the United States. The court held that the "rule is well settled that, if a crime is committed within the boundaries of such lands so ceded or purchased by the United States with the consent of the state, the federal courts have jurisdiction of a prosecution therefor to the exclusion of the state courts." Id.

However, in Gill, the court found that the United States had not complied with the provisions of Tennessee Code § 98. The government had not filed a map or plan and description by metes and bounds in the county clerk's office. Id. Therefore, the court held that the government had taken no action showing a purpose or intent to assume jurisdiction over the territory. The court also held that the federal government did not have exclusive jurisdiction over the land, and therefore, Gill's conviction in the state court was affirmed. Id. at 638-39.

The petitioner's case is distinguishable from Gill. The documentation in the record reflects that upon acquiring the deed to tract CR 1418 in 1938, the United States did file a map or plan, and description by metes and bounds, of the tract in the county clerk's office of Hamilton County, where tract CR 1418 was located. Also, the Supreme Court has held that locks and dams, like the one for which CR 1418 was purchased, constitute "needful buildings" as used under Article 1, § 8, clause 17, of the United States Constitution and are a benefit to the United States. James v. Dravo Contracting Co., 302 U.S. 134, 142-43, 58 S. Ct. 208, 212-13 (1937). Therefore, by the

terms of the Tennessee Code § 98, the State of Tennessee conferred exclusive jurisdiction over tract CR 1418 to the United States, and by the presumption of exclusive jurisdiction operating under Leavenworth, 114 U.S. at 528, 5 S. Ct. at 997, the United States accepted it.

Several states have addressed similar jurisdictional issues to that raised by the petitioner. In Manley v. Burkhart, 531 N.E.2d 1306, 1309 (Ohio 1988), the petitioner contested convictions for assaults that took place at the Hannibal Lock and Dam Project of the U.S. Army Corps of Engineers. The Ohio Supreme Court held that because the record did not show that the property where the offenses occurred was purchased before February 1, 1940, and that the federal government had not expressly accepted jurisdiction as required by 40 U.S.C. § 255, the Ohio state courts had proper subject matter jurisdiction. Manley, 531 N.E.2d at 1309. In State v. Burell, 123 S.E.2d 795, 801 (N.C. 1962), and State v. Graham, 267 S.E.2d 56, 59 (N.C. Ct. App. 1980), the appellate courts followed reasoning similar to that in Manley. Because the lands were acquired after February 1, 1940, and there was no showing by the petitioner that the federal government had expressly accepted jurisdiction, the appellate courts concluded that the state could properly exercise subject matter jurisdiction over the defendants. Burell, 123 S.E.2d at 801; Graham, 267 S.E.2d at 59.

The petitioner's case is distinguishable from Manley, Burell, and Graham in that the TVA property where the crime took place was purchased before February 1, 1940, and the presumption of Leavenworth that the federal government accepted exclusive jurisdiction operates. The United States accepted the exclusive jurisdiction offered by Tennessee Code § 98 when it filed a map or plan with the county clerk's office.

IV.

There is, however, an additional question about the property agreement between the United States and the State of Tennessee existing at the time of the petitioner's offenses. The record contains a copy of an easement executed on March 5, 1992, assigning all "rights, privileges, and powers" over the tract from Hamilton County, Tennessee, to the City of Chattanooga with the consent of the TVA. While this transfer of rights is after the date of the offenses, the grant of an earlier easement to Hamilton County could be controlling on the question of jurisdiction.

The mere fact that a portion of the property is used as a right of way is not in itself controlling on jurisdiction, and rights of way for various purposes may be entirely compatible with the exclusive jurisdiction ceded to the United States. Unzeuta, 281 U.S. at 144, 50 S. Ct. at 286. A right of way gives one party the right to pass over the land of another and is considered to be an easement. See, e.g., Panhandle Eastern Pipeline Co. v. State Highway Comm'n, 294 U.S. 613, 618, 55 S. Ct. 563, 565 (1935). However, when an easement is granted, the extent of the rights granted or reserved depends on the terms of the easement. See, e.g., Foshee v. Brigman, 129 S.W.2d 207, 208 (1939). If the easement is specific in its terms, it is decisive of the limits of the easement. Id. In construing the extent of the expressed rights and liabilities of the parties to the easement, the situation of the property and the surrounding circumstances demonstrates the intent of the parties at the easement's formation. See, e.g., Brew v. Van Deman, 53 Tenn. (6 Heisk.) 433 (1871). When the terms of the easement are general, an exercise of a right, with the acquiescence and consent of the other party, fixes the terms of the easement and is demonstrative of the parties' intent. Id.

An act of the federal government granting land to a state is to be treated as both law and a grant, and the intent of the federal government controls the interpretation of the law and conditions of the grant. See Wisconsin C. R. Co. v.

Forsythe, 159 U.S. 46, 55, 15 S. Ct. 1020, 1023 (1895). The federal government may convey the grant of an easement over federal land to any state for any recreational or legitimate public purpose. 43 U.S.C. §§ 869(a), 869-2 (1986). Partial, concurrent, or exclusive jurisdiction over the areas covered by a state's easement may be ceded to the state. 43 U.S.C. § 931a (1986).

The easement presented by the petitioner conveys all "rights, privileges, and powers" from Hamilton County, Tennessee, to the City of Chattanooga in 1992. There is no indication in the documentation as to how Hamilton County gained control over the land. When a grantee receives an easement from the federal government, the grantee may transfer title received from the federal government only with the approval of the original federal grantor. 43 U.S.C. § 869-2(a) (1986). The easement from Hamilton County, Tennessee to the City of Chattanooga has the approval of the TVA attached to it.

If Hamilton County or the City of Chattanooga held the power to build a park or maintain the lands where the crimes occurred, then perhaps it was the intent of the federal government that the County or City have the authority to regulate the activities on these lands. However, the particular status of the land where the offenses were committed represents a finding of fact and is beyond the purview of this court. If the federal government originally held and maintained exclusive jurisdiction over the land where the events occurred, then the Hamilton County Criminal Court would have been without the proper subject matter jurisdiction to convict the petitioner. Conversely, if the actions of the federal government conveyed sufficient jurisdiction back to Hamilton County, then the convictions would stand, and the dismissal of the habeas corpus petition would be proper. In this respect, the important questions left unanswered in the record before us are whether TVA transferred rights to the land to Hamilton County at the time of the petitioner's offenses, and if so, what rights were transferred.

V.

The state, in its brief response to the habeas corpus petition, relies heavily on this court's decision in Massengale, arguing that venue was found to exist at the convicting trial and that nothing in the record contradicts this finding. The state reasons that this makes the convictions merely voidable, not void. Because the finding of venue was a finding of fact, the state argues that the decision of the Hamilton County court should not be disturbed. However, as previously noted, the Tennessee Supreme Court has drawn a distinction between a finding of venue and the granted subject matter jurisdiction of the court. See Meighan, 924 S.W.2d at 639. If a court has no jurisdiction over the subject matter of the criminal conviction, the defendant's conviction in that court is void. Wright, 451 S.W.2d at 709. In this fashion, a finding that the offenses occurred within the boundaries of Hamilton County does not foreclose the issue of whether they occurred on land under the exclusive jurisdiction of the federal government.

We also note that in Massengale, this court stated in dictum that "whether the locus of an alleged crime was within the exclusive jurisdiction of the United States is an issue for determination by the trial court where the indictment is found and cannot be raised, as here, by writ of habeas corpus on the ground of want of jurisdiction." Massengale, 826 S.W.2d at 123 (citing Rodman v. Pothier, 264 U.S. 399, 44 S. Ct. 360 (1924)). We do not believe that this language should be interpreted to mean that the writ of habeas corpus is never appropriate when a lack of jurisdiction is alleged. This language has been used by the United States Supreme Court in two decisions, once in the case of Henry v. Henkel, 235 U.S. 219, 228, 35 S. Ct. 54, 57 (1914), and again in Rodman. In both decisions, this language was used to deny a writ of habeas corpus for removal proceedings before trial when a lack of subject matter jurisdiction was alleged. In Henry, the Court curtailed the use of the writ of habeas corpus in advance of trial and direct appeal with the express motive of not interfering with the administration of the

criminal law in the trial courts. Id. The Court held that the writ of habeas corpus should only be granted before trial for jurisdictional questions stemming from exceptional cases. Id.

In Massengale, this court found that the petitioner did not meet the burden of proof required to show that the federal government had exclusive jurisdiction over the land where the offenses occurred. However, the supporting materials submitted by the present petitioner with his habeas corpus petition indicate that the crimes may have occurred on lands owned by the Tennessee Valley Authority and under the exclusive jurisdiction of the federal government. Proof on these issues was not allowed by the trial court. Thus, there are no findings of fact relative to (1) the location of the criminal events, (2) the owner of the property where and when the offenses occurred, and (3) the status of the agreements, if any, between the property owner and other entities at that time. These represent findings of fact that the trial court should make after an appropriate evidentiary hearing.

In consideration of the foregoing and the record as a whole, we reverse the dismissal of the petition for habeas corpus relief and remand the case to the trial court for an evidentiary hearing and for such further action as it deems appropriate.

Joseph M. Tipton, Judge

CONCUR:

Paul G. Summers, Judge

John K. Byers, Senior Judge

