

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

MAY SESSION, 1999

FILED
July 9, 1999
Cecil W. Crowson
Appellate Court Clerk

ALBERT JONES,)
)
Appellant,)
)
VS.)
)
STATE OF TENNESSEE,)
)
Appellee.)

C.C.A. NO. 01C01-9708 CR 00317

DAVIDSON COUNTY

HON. THOMAS A. SHRIVER
JUDGE

(Writ of Habeas Corpus)

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OPINION FILED _____

AFFIRMED

JERRY L. SMITH, JUDGE

OPINION

The petitioner, Albert Jones, appeals the order from the Davidson County Criminal Court denying his petition for writ of habeas corpus. The petitioner is presently serving a twenty (20) year sentence as a result of his guilty plea to aggravated rape in the Cheatham County Circuit Court in May 1989. In 1996, he filed this petition for writ of habeas corpus alleging that the Cheatham County Circuit Court was without jurisdiction to convict him because he was denied his right to a juvenile transfer hearing, and he did not knowingly and voluntarily waive that right. He further claims that the police illegally questioned him in violation of his right to counsel and his right to due process of law. After an evidentiary hearing, the trial court denied the petition. After a thorough review of the record before this Court, we affirm the judgment of the trial court.

I

On February 14, 1989, the petitioner raped a 59 year old woman in the course of burglarizing her home. The petitioner was seventeen (17) at the time of the offense, just shy of his eighteenth birthday on March 30, 1989. After the petitioner was arrested in connection with these charges, he appeared in juvenile court for a bond hearing without counsel present. Counsel was subsequently appointed and recommended that the petitioner receive a psychiatric evaluation to determine his competency to stand trial. The petitioner was then committed to Central State Hospital for thirty (30) days, after which he was found competent to stand trial.

Subsequently, the state and defense counsel entered into an agreement whereby the petitioner would plead guilty to one (1) count of aggravated rape and receive a sentence of twenty (20) years, in exchange for the state dismissing charges of another aggravated rape count, one (1) count of burglary and two (2) counts of aggravated assault. On May 4, the acting juvenile judge, Robert L. Perry, entered an order transferring the petitioner to circuit court to stand trial as an adult. That same day, the petitioner appeared before the Cheatham County Circuit Court and entered a plea of guilty to one (1) count of aggravated rape. During the plea proceedings, the petitioner was informed of his right to an acceptance hearing and specifically waived that right.¹

At the hearing on the petition for writ of habeas corpus, the petitioner testified that he did not know that he had a right to a transfer hearing in juvenile court. He stated that his attorney advised him that he could not be tried as a juvenile due to the “nature of the crime” committed.

Steve Stack, the petitioner’s trial counsel, acknowledged that the petitioner did not receive a transfer hearing in juvenile court. However, he testified that, in an effort to secure the favorable plea agreement offered by the state, the petitioner agreed to waive the transfer and acceptance hearings.

In denying the petition, the trial court observed that the petitioner did not allege that his sentence term had expired. The trial court found that the petitioner waived his right to a transfer hearing in juvenile court. The court stated that the transfer order signed by Juvenile Judge Perry “was sufficient evidence to indicate a knowing waiver of the petitioner’s right to a transfer hearing, . . .” The trial court

¹ The trial court referred to the petitioner’s right to a “transfer hearing” during the guilty plea proceedings. However, at the hearing on the petition for writ of habeas corpus, all parties agreed that the petitioner was specifically waiving his right to an acceptance hearing, not a transfer hearing. Prior to April 15, 1994, all juveniles transferred from juvenile court had the right to seek an acceptance hearing in criminal court to determine whether the criminal court would accept jurisdiction over the child. Tenn. Code Ann. § 37-1-159 (1991).

found that the Cheatham County Circuit Court had both personal and subject matter jurisdiction. Thus, the trial court denied the petition for writ of habeas corpus. The trial court further found that if the petition were to be treated as one for post-conviction relief, the three (3) year statute of limitations had expired under Tenn. Code Ann. § 40-30-102 (1990).

From the trial court's order denying relief, the petitioner brings this appeal.

II

It is a well-established principle of law that the remedy of habeas corpus is limited in its nature and its scope. Archer v. State, 851 S.W.2d 157, 161-162 (Tenn. 1993); Passarella v. State, 891 S.W.2d 619, 626 (Tenn. Crim. App. 1994). In Tennessee, habeas corpus relief is available only if “it appears upon the face of the judgment or the record of the proceedings upon which the judgment is rendered, that a convicting court was without jurisdiction or authority to sentence a defendant, or that a defendant’s sentence of imprisonment or other restraint has expired.” Archer v. State, 851 S.W.2d at 164 (citation omitted in original). The habeas petitioner bears the burden of demonstrating by a preponderance of the evidence that the judgment of conviction is void or that his term of confinement has expired. Passarella v. State, 891 S.W.2d at 627.

III

The petitioner’s main contention is that the absence of a valid transfer hearing deprived the criminal court of jurisdiction; as a result, his conviction and

sentence are void. He further claims that, prior to his pleading guilty, he was illegally detained and questioned in violation of his constitutional rights.

A.

Tenn. Code Ann. § 37-1-134(a) provides for the transfer of a juvenile to criminal court “to be held according to law and to be dealt with as an adult in the criminal court” once a petition alleging delinquency has been filed. Although the juvenile courts retain original and exclusive jurisdiction over juvenile matters, see Tenn. Code Ann. § 37-1-103, a transfer pursuant to Tenn. Code Ann. § 37-1-134(a) vests jurisdiction in the criminal courts over the juvenile.

The right to a transfer hearing is “sufficiently fundamental to be considered a matter of due process, in the context of juvenile justice.” Sawyers v. State, 814 S.W.2d 725, 729 (Tenn. 1991). The transfer hearing in juvenile court has been likened to a preliminary hearing with regard to the issue of probable cause. State v. Womack, 591 S.W.2d 437, 443 (Tenn. App. 1979).

However, “the absence of a transfer order cannot be said to affect the court’s subject matter jurisdiction, which, in a real sense, is concurrent with that of the juvenile court as to certain offenses committed by children falling within a specified age span. . . . The only requirement . . . is that such proceedings against a juvenile must originate in juvenile court.” Sawyers v. State, 814 S.W.2d at 729 (citations omitted); see *also* State v. Hale, 833 S.W.2d 65, 67 (Tenn. 1992). The lack of a valid transfer hearing does not deprive a criminal court of jurisdiction, but has been described as a “procedural deficiency.” Sawyers, 814 S.W.2d at 729. In addition, a defendant can waive his right to a transfer hearing. State v. Hale, 833 S.W.2d at 67-68.

Clearly, the Cheatham County Circuit Court had the authority to convict the petitioner as a transfer proceeding would have been proper under Tenn. Code

Ann. § 37-1-134(a)(1) (1984) (providing that a juvenile may be transferred to circuit court and tried as an adult if “[t]he child was sixteen (16) years or more of age at the time of the alleged conduct, . . .”). The lack of a valid transfer hearing did not affect the circuit court’s jurisdiction, and the petitioner’s conviction is not void on this basis.²

B.

Furthermore, the petitioner’s claim that he was illegally detained and questioned in violation of his constitutional rights does not render his conviction void. Such a claim would make the judgment voidable, not void. In criminal cases, the remedy of habeas corpus is limited to instances where the judgment is void or the term of imprisonment has expired. Passarella, 891 S.W.2d at 626. Thus, this claim is not cognizable in a petition for writ of habeas corpus.

IV

The petitioner’s allegations are not cognizable in a petition for writ of habeas corpus as they would render the judgment merely voidable, not void. These claims would properly be recognized in a petition for post-conviction relief. However, at the time of the petitioner’s conviction, the statute of limitations for post-conviction relief was three (3) years. See Tenn. Code Ann. § 40-30-102 (1990). The petitioner pled guilty in May 1989 and filed the present petition in November 1996. Thus, the three (3) year statute of limitations has expired.

² The petitioner also contends that he did not knowingly and voluntarily waive his right to a transfer hearing. The trial court found that the petitioner knowingly waived his right to a transfer and an acceptance hearing. However, because the lack of a transfer hearing does not affect the trial court’s jurisdiction, the issue whether the petitioner knowingly and voluntarily waived his right to a transfer hearing is irrelevant to this Court’s determination on the petition for writ of habeas corpus. As a result, this Court will not address this issue.

V

The petitioner has not established that the judgment of conviction is void or that his sentence term has expired; therefore, the trial court properly denied the petition for habeas corpus relief. Moreover, the trial court properly found that the statute of limitations for post-conviction relief had expired. Accordingly, the judgment of the trial court is affirmed.

JERRY L. SMITH, JUDGE

CONCUR:

DAVID G. HAYES, JUDGE

NORMA MCGEE OGLE, JUDGE