

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

OCTOBER SESSION, 1999

FILED

November 17, 1999
Cecil CROWS ON, Jr.
Appellate Court Clerk

**HAROLD W. MAYS and
BILL NARRMORE,**

CR-00126

Appellants,

vs.

STATE OF TENNESSEE,

Appellee.

*
*
*
*
*
*
*
*
*

No. 03C01-9904-

MORGAN COUNTY

Hon. E. Eugene Eblen, Judge

(Writ of Habeas Corpus)

For the Appellants:

Joe H. Walker

Public Defender and
Susan Corea Fuller
Asst. Public Defender
P. O. Box 334
Harriman, TN 37748

For the Appellee:

Paul G. Summers

Attorney General and Reporter

Ellen H. Pollack

Assistant Attorney General
Criminal Justice Division
425 Fifth Avenue North
2d Floor, Cordell Hull Building
Nashville, TN 37243-0493

J. Scott McCluen

District Attorney General
P. O. Box 703
Kingston, TN 37763

OPINION FILED: _____

AFFIRMED

David G. Hayes, Judge

OPINION

_____The appellants, Harold W. Mays and Bill Narmore, correctional inmates at the Brushy Mountain Correctional Complex, appeal from the summary dismissal of their joint *pro se* petition for writ of habeas corpus. On appeal, the appellants argue (1) the trial court erred by dismissing the petition without a hearing and (2) the trial court should have considered the petition as one for post-conviction relief.

After review, we affirm the dismissal of the petition.

Background

On August 19, 1998, the appellants, while serving sentences at Brushy Mountain, tested positive following random prison drug screenings. Based upon these disciplinary infractions, both inmates subsequently signed guilty plea agreements, waiving their right to a disciplinary hearing. The agreement provided that the appellants would receive as punishment five days punitive segregation, six months loss of visitation and package privileges, and drug retesting within three months. Subsequently, the appellants filed a grievance action seeking to vacate their guilty plea agreements. The Department of Correction found the grievances “unacceptable” for further processing.

On October 22, 1998, the appellants jointly filed the instant petition for writ of habeas corpus relief. Each appellant alleges in his respective petition:

I accepted the agreement and signed the form. . . . I was told to pack up and was brought to Morgan Regional and placed in punitive segregation. I then discovered that I had lost my job, my security, sixteen days sentence credits and must serve 5 days punitive segregation. The form I had signed has been altered to include the punishment I am to receive. This punishment was NOT on the form when I signed it.

On January 26, 1999, the Morgan County Criminal Court dismissed the petition without holding an evidentiary hearing, finding that “[t]hese complaints do not attack the validity of the underlying judgments against him nor do they in any way render same void, nor do they raise issues which in any way claim or show an

expiration of [their] sentences.” The appellants now appeal from this dismissal.

Analysis

In the present case, the appellants may not attack by way of a petition for writ of habeas corpus the disciplinary action of the Department of Correction. The facts, as stated in the petition, cannot support a cause of action under the habeas corpus provisions of Tennessee law. See generally Tenn. Code Ann. § 29-21-101 *et seq.* (1980 and 1998 Supp.). Our supreme court has held that the writ of habeas corpus will not lie to challenge the denial of prison privileges and related internal matters, but is only available where a prisoner’s sentence is void or his term of imprisonment has expired. See Hall v. Heer, 217 Tenn. 392, 398 S.W.2d 71 (1966); State ex rel. Jordan v. Bomar, 217 Tenn. 494, 398 S.W.2d 724 (1965). There is no indication that the appellants’ respective convictions are void or that their sentence of imprisonment has expired. Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993). As the appellants present no facts supporting grounds for habeas corpus relief, we conclude that the trial court’s summary dismissal of the petition was proper.

Additionally, although it is true that habeas corpus petitions may be treated as petitions for post-conviction relief, see Tenn. Code Ann. § 40-30-205(c) (1997), the appellants’ complaint in the case *sub judice* cannot be resolved in a post-conviction proceeding. Relief under the Post-Conviction Procedure Act is available only to challenge a conviction or sentence of a court of this state. See Tenn. Code Ann. § 40-30-202(a) (1997). The action in the present case was the result of a disciplinary proceeding by the Department of Correction, which is an agency of the executive branch of government.

It is well established that prison disciplinary proceedings may only be reviewed by the courts through a common law writ of certiorari filed in Davidson County.¹ See Bishop v. Conley, 894 S.W.2d 294, 296 (Tenn. Crim. App. 1994)

¹Review of TDOC disciplinary decisions are not encompassed under the Uniform Administrative Procedures Act. See Mandela v. Campbell, 978 S.W.2d 531, 533 (Tenn. 1998). See also E.L. Reid v. W.G. Lutche, No. 01A10-9803-CH00168 (Tenn. App. at Nashville, Mar. 29, 1999) (Tenn. Code Ann. § 4-5-106(b), the Mandela opinion, and the 1998 amendment to Tenn.

(citing Tenn. Code Ann. § 27-8-101, -102 (1980)). The writ must be filed within 60 days from the final decision of the reviewing board or commission. Tenn. Code Ann. § 27-9-102. From the record before us, it appears that the last action on this matter occurred on September 18, 1998. Thus, the appellants' petition for writ of habeas corpus was filed within the 60 day period. Notwithstanding, this court has no authority, statutory or otherwise, to transfer the appellants' case across jurisdictional boundaries. See Bishop v. Conley, 894 S.W.2d at 296. Nor is there any authority permitting this court to convert the habeas corpus petition into a petition for writ of certiorari. Id.

For the reasons discussed herein, the appellants' joint petition for writ of habeas corpus relief is dismissed.

Code Ann. § 4-5-102(10) have clearly shut the door on any future use of the UAPA to challenge disciplinary proceedings in the Department of Correction).

DAVID G. HAYES, Judge

CONCUR:

GARY R. WADE, Presiding Judge

DAVID H. WELLES, Judge