IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

MAY 1999 SESSION2

FILED

November 29, 1999

Cecil Crowson, Jr.
Appellate Court Clerk

JACKIE MCLANEY,	*	C.C.A. M1998 00187 CCA R3 CD
Appellant,	*	DAVIDSON COUNTY
vs.	*	Hon. J. Randall Wyatt, Jr., Judge
STATE OF TENNESSEE,	*	(Petition for Writ of Habeas Corpus)
Appellee.	*	

For Appellant:

Jackie W. McLaney
TDOC # 113694
Hardeman County Correctional Facility
2520 Union Springs Road
Whiteville, TN 38075

For Appellee:

Paul G. Summers
Attorney General and Reporter
425 Fifth Avenue North
Nashville, TN 37243-0493

Kim R. Helper
Assistant Attorney General
Criminal Justice Division
425 Fifth Avenue North
Nashville, TN 37243-0493

OPINION FILED: _____________

AFFIRMED

NORMA MCGEE OGLE, JUDGE

OPINION

The petitioner, Jackie McLaney, appeals the summary dismissal of his petition for a writ of habeas corpus by the Davidson County Criminal Court on June 22, 1998, without the appointment of counsel or an evidentiary hearing. Following a thorough review of the record and the parties' briefs, we affirm the judgment of the trial court.

On November 10 and 12, 1986, the petitioner pled guilty in the Jefferson County Circuit Court to aggravated rape, rape, and third degree burglary. According to the petitioner, he pled guilty in all three cases pursuant to a plea agreement which provided for concurrent sentences of forty years incarceration in the Tennessee Department of Correction for the aggravated rape conviction, twenty years incarceration for the rape conviction, and seven years incarceration for the burglary conviction. The petitioner filed the instant petition for a writ of habeas corpus on April 7, 1998.[1] The gravamen of the petitioner's complaint is that he was released on bail in the aggravated rape case when he committed the rape and burglary offenses and, accordingly, concurrent service of his sentences directly contravenes Tenn. Code. Ann. § 40-20-111(b) (1986) and Tenn. R. Crim. P. 32(c)(3)(C). In sum, the petitioner argues that his concurrent sentences are illegal and subject to being set aside at any time. See, e.g., State v. Mahler, 735 S.W.2d 226, 228 (Tenn. 1987)(citing State v. Burkhart, 566 S.W.2d 871, 873 (Tenn. 1978)).

The Habeas Corpus Act requires a court to review a petition and dismiss it unless it alleges a cognizable ground for relief. Tenn. Code Ann. §§ 29-21-101 to –109 (1980). In other words, a petition for a writ of habeas corpus may be summarily dismissed by the trial court without appointment of counsel, without an evidentiary hearing, and without the opportunity to amend the petition, if the face of the petition does not present a cognizable claim. Mitchell v. Carlton, No. 03C01-9704-CR-00125, 1998 WL 8505, at *2 (Tenn. Crim. App. at Knoxville, January 12, 1998). See also State ex rel. Byrd v. Bomar, 381 S.W.2d 280, 283 (Tenn. 1964). Conversely, if necessary to the resolution of a petition for a writ of habeas corpus, the trial court should appoint counsel and conduct an evidentiary hearing. Tenn. Code. Ann. § 40-14-204 (1997); Russell v. State ex rel. Willis, 437 S.W.2d 529, 531 (Tenn. 1969).

In order to present a cognizable claim, a habeas corpus petition must allege a void

---

[1] The petitioner also filed a petition for post-conviction relief in the aggravated rape case two months following his convictions. In his post-conviction petition, the petitioner alleged ineffective assistance of counsel and challenged the voluntariness of his guilty plea. This court affirmed the post-conviction court's denial of relief. State v. McClaney, No. 74, 1988 WL 30180 (Tenn. Crim. App. at Knoxville, March 31, 1988).