

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT JACKSON  
Assigned on Briefs May 2, 2023

FILED

06/21/2023

Clerk of the  
Appellate Courts

**MICHAEL BAILEY v. STATE OF TENNESSEE**

**Appeal from the Criminal Court for Shelby County**  
**Nos. 09-02887, 09-02888, 09-02889, 09-02890, 09-02891, 09-02892, 09-02893**  
**Lee V. Coffee, Judge**

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**No. W2022-01405-CCA-R3-HC**

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Petitioner, Michael Bailey, appeals from the Shelby County Criminal Court’s summary dismissal of his petition for writ of habeas corpus. Discerning no error, we affirm the judgment of the habeas corpus court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed**

TIMOTHY L. EASTER, J., delivered the opinion of the court, in which JOHN W. CAMPBELL, SR., and KYLE A. HIXSON, JJ., joined.

Michael Bailey, Pro Se, Henning, Tennessee.

Jonathan Skrmetti, Attorney General and Reporter; Richard D. Douglas, Senior Assistant Attorney General; Steve Mulroy, District Attorney General; and Leslie Byrd, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

*Procedural Background*

In 2009, Petitioner pleaded guilty in seven different case numbers to one count of aggravated assault and eight counts of aggravated robbery in exchange for an effective 30-year sentence with a 60-percent release eligibility. *Bailey v. State*, No. W2019-02152-CCA-R3-PC, 2021 WL 4142428, at \*1 (Tenn. Crim. App. Sept. 13, 2021), *perm. app. denied* (Tenn. Feb. 10, 2022) (“*Bailey IP*”). Petitioner subsequently filed a petition for writ of habeas corpus, alleging that his sentences were illegal because he should have been

sentenced to serve 100 percent of his sentence based on his prior convictions. *Id.* The trial court granted the petition, and Petitioner's convictions were vacated. *Id.*

Petitioner was subsequently convicted by a jury of aggravated robbery in case number 09-02888, and the trial court sentenced him as a career, repeat violent offender to life without the possibility of parole. *Id.* Petitioner pleaded guilty to the remaining counts of aggravated robbery and aggravated assault in case numbers 09-02887, 09-02889, 09-02890, 09-02891, and 09-02893. *Id.* The trial court imposed a sentence of life without the possibility of parole for each count of aggravated robbery and 15 years for the aggravated assault conviction and ordered two of Petitioner's life sentences to be served consecutively for an effective sentence of two consecutive life terms without the possibility of parole. *Id.*

On direct appeal in case number 09-02888, Petitioner challenged the sufficiency of the evidence and the imposition of consecutive sentencing. A panel of this Court affirmed the judgment of the trial court, and our supreme court denied Petitioner's application for permission to appeal. *State v. Bailey*, No. W2014-02517-CCA-R3-CD, 2016 WL 269851, at \*1 (Tenn. Crim. App. Jan. 11, 2016), *perm app. denied* (Tenn. May 9, 2016) ("*Bailey I*").

While his direct appeal was pending, Petitioner filed a pro se petition for post-conviction relief and an amended petition through appointed counsel. *Bailey II*, 2021 WL 4142428, at \*1. Petitioner alleged that his trial counsel was ineffective for failing to adequately investigate the case or meet with and communicate with Petitioner and that his guilty pleas were unknowingly and involuntarily entered. *Id.* Petitioner waived his right to counsel at the evidentiary hearing. *Id.* Petitioner ultimately "abandoned his petition by walking out in the middle of the evidentiary hearing without providing any sworn testimony to support his factual allegations." *Id.* at \*6 (citing T.C.A. § 40-30-110(a)). A panel of this Court affirmed the post-conviction court's denial of relief.

Petitioner filed his second petition for writ of habeas corpus on March 30, 2021, which the Davidson County Criminal Court summarily dismissed on August 30, 2021. The record before us does not contain the petition, but it contains the order denying the petition. The order states Petitioner's assertion, that the State's failure to include or reference his prior convictions in his indictment renders the indictment void pursuant to Tennessee Code Annotated section 40-35-2032(e), is not a claim upon which relief can be granted.

On August 11, 2022, Petitioner filed a third petition for writ of habeas corpus relief, again arguing that his indictments and sentences were void under Tennessee Code Annotated section 40-35-203(e) because the State did not allege his prior convictions for aggravated robbery in the indictments. In the petition, Petitioner stated that he filed the petition in the Shelby County Criminal Court because it was the sentencing court and

possessed all relevant records and retained the authority to correct an illegal sentence at any time. On August 22, 2022, the habeas corpus court summarily dismissed the petition, finding that Petitioner failed to state a colorable claim for relief and failed to file the petition in the proper county. Petitioner appeals.

### *Analysis*

On appeal, Petitioner maintains his contention that he is entitled to habeas corpus relief because the State failed to allege in the indictments that Petitioner was previously convicted of aggravated robbery. He asserts that his sentence was enhanced based on convictions not found by the jury. In response, the State asserts that Petitioner failed to comply with the statutory procedural requirements and that Petitioner has not stated a cognizable claim for habeas corpus relief. We agree with the State and conclude that the Petitioner is not entitled to relief.

“The determination of whether habeas corpus relief should be granted is a question of law.” *Summers v. State*, 212 S.W.3d 251, 255 (Tenn. 2007) (citing *Hart v. State*, 21 S.W.3d 901, 903 (Tenn. 2000)). Accordingly, our review is de novo with no presumption of correctness given to the findings and conclusions of the lower court. *Id.* (citing *State v. Livingston*, 197 S.W.3d 710, 712 (Tenn. 2006)).

A prisoner is guaranteed the right to habeas corpus relief under article I, section 15 of the Tennessee Constitution. Tenn. Const. Art. I, § 15; *see* Tenn. Code Ann. §§ 29-21-101 to -130. The grounds upon which habeas corpus relief will be granted, however, are very narrow. *Taylor v. State*, 995 S.W.2d 78, 83 (Tenn. 1999). It is well-established that “a petition for writ of habeas corpus may not be used to review or correct errors of law or fact committed by a court in the exercise of its jurisdiction.” *Edwards v. State*, 269 S.W.3d 915, 920 (Tenn. 2008) (quoting *State ex rel. Holbrook v. Bomar*, 364 S.W.2d 887, 888 (Tenn. 1963)). “Habeas corpus relief is available in Tennessee only when ‘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 157, 164 (Tenn. 1993) (quoting *State v. Galloway*, 45 Tenn. (5 Cold.) 326, 336-37 (1868)).

A habeas corpus petition challenges void and not merely voidable judgments. *Summers*, 212 S.W.3d at 255-56 (citing *Potts v. State*, 833 S.W.2d 60, 62 (Tenn. 1992)). “A void judgment is one in which the judgment is facially invalid because the court lacked jurisdiction or authority to render the judgment or because the defendant’s sentence has expired.” *Taylor*, 995 S.W.2d at 83 (citing *Dykes v. Compton*, 978 S.W.2d 528, 529 (Tenn. 1998); *Archer*, 851 S.W.2d at 161-64). It is the petitioner’s burden to demonstrate by a

preponderance of the evidence that the judgment is void or that the confinement is illegal. *Wyatt v. State*, 24 S.W.3d 319, 322 (Tenn. 2000). The habeas corpus court may summarily dismiss the petition without the appointment of a lawyer and without an evidentiary hearing if it is clear from the petitioner's filings that no cognizable claim has been stated and that the petitioner is not entitled to relief. *Summers*, 212 S.W.3d at 261-62; *Hickman v. State*, 153 S.W.3d 16, 20 (Tenn. 2004).

Additionally, the procedural requirements for habeas corpus relief are mandatory and must be scrupulously followed. *Summers*, 212 S.W.3d at 259; *Hickman*, 153 S.W.3d at 21. In particular, Tennessee Code Annotated section 29-21-107(b)(4) requires that a petitioner include copies of all previously filed petitions for writ of habeas corpus. "A trial court properly may choose to summarily dismiss a petition for failing to comply with the statutory procedural requirements." *Summers*, 212 S.W.3d at 260; see *Hickman*, 153 S.W.3d at 21.

Petitioner failed to attach to his petition copies of all previous petitions for habeas corpus relief. Petitioner states in his petition that his two previously filed petitions have "[b]een [m]isplaced." However, such explanations are insufficient to excuse his noncompliance with the statutory requirements. See *Asata D. Lowe v. State*, No. E2022-00285-CCA-R3-HC, 2022 WL 1389944, at \*4 (Tenn. Crim. App. Oct. 24, 2022) (concluding the petitioner's assertion that his prior petitions were "lost" and "unavailable to attach to this petition" were insufficient to excuse his failure to comply with Code section 29-21-107(b)(4)), *no perm. app. filed*. For this reason alone, the habeas corpus court could have dismissed the petition.

Nevertheless, the court's dismissal of the petition was proper because Petitioner has failed to state a cognizable claim for relief. Our supreme court has held that "the validity of an indictment and the efficacy of the resulting conviction may be addressed in a petition for habeas corpus when the indictment is so defective as to deprive the court of jurisdiction." *Dykes v. Compton*, 978 S.W.2d 528, 529 (Tenn. 1998).

Petitioner argues that the State was required to allege in the indictment that he had prior convictions for aggravated robbery pursuant to Tennessee Code Annotated section 40-35-203(e), which states:

(e) If the criminal offense for which the defendant is charged carries an enhanced punishment for a second or subsequent violation of the same offense, the indictment in a separate count shall specify and charge that fact. If the defendant is convicted of the offense, then the jury must find that beyond a reasonable doubt the defendant has been previously convicted the requisite number of times for the same offense. Upon such finding, the

defendant shall be subject to the authorized terms of imprisonment for the felonies and misdemeanors as set forth in § 40-35-111.

T.C.A. § 40-35-203(e). Petitioner's reliance on this statute is misplaced. The statute applies only to offenses where a second or subsequent violation of the same offense results in an enhanced punishment, such as simple possession, driving under the influence, and domestic assault. T.C.A. § 39-17-418(e) (simple possession); T.C.A. § 55-10-411(b)(2) (driving under the influence); T.C.A. § 39-13-111(c) (domestic assault).

Petitioner was convicted of aggravated robbery and sentenced as a repeat violent offender pursuant to Tennessee Code Annotated section 40-35-120(a)(1)-(2). The State was not required to give notice of the applicability of the statute in the indictment for it to apply. *See State v. Turner*, No. E2010-02540-CCA-R3-CD, 2012 WL 1077153, at \*10 (Tenn. Crim. App. Mar. 30, 2012) (“By its plain language, the release eligibility requirement is mandatory and automatically applicable to persons who come within its purview.”), *perm. app. denied* (Tenn. Aug. 16, 2012). Here, the State properly provided notice of its intent to seek enhanced punishment and notice of Petitioner's status as a repeat violent offender. Accordingly, Petitioner has not shown that his indictments, convictions, or sentences are void. Petitioner is not entitled to habeas corpus relief.

#### CONCLUSION

Based on the foregoing, we affirm the summary dismissal of the petition for writ of habeas corpus relief.

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TIMOTHY L. EASTER, JUDGE