IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs August 1, 2023

STATE OF TENNESSEE v. MARQUETTE BENSON A/K/A MUKES

Appeal from the Criminal Court for Shelby County
No. 16-03588 Chris Craft, Judge

No. W2022-01811-CCA-R3-CD

The pro se Defendant, Marquette Benson, aka Marquette Mukes, appeals the summary denial of his September 6, 2022 Tennessee Rules of Criminal Procedure 36.1 motion to correct an illegal sentence. Because it is clear that the Defendant's September 6, 2022 filing is merely a request for the trial court to reconsider its denial of the Defendant's first Rule 36.1 motion, which was summarily denied on October 4, 2021 for failure to state a colorable claim, we dismiss the appeal for lack of jurisdiction.

Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed

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

Marquette Benson AKA Marquette Mukes, Whiteville, Tennessee, Pro Se.

Jonathan Skrmetti, Attorney General and Reporter; Ronald L. Coleman, Assistant Attorney General; Amy P. Weirich, District Attorney; and Leslie R. Byrd, Assistant District Attorney, for the appellee, State of Tennessee.

OPINION

FACTS and PROCEDURAL HISTORY

In 2017, the Defendant was convicted by a Shelby County Criminal Court jury of "two counts of convicted felon in possession of a firearm, a Class C felony[.]" *State v. Benson*, No. 2017-01276-CCA-R3-CD, 2018 WL 4562928, at *1 (Tenn. Crim. App. Sept.

21, 2018), *perm. app. denied* (Tenn. Feb. 25, 2019). After merging the counts into a single conviction, the trial court sentenced the Defendant as a Range II, multiple offender to ten years in the Department of Correction. *Id.* The record in that case reveals that the Defendant was indicted and convicted for two counts of possession of a firearm by a convicted felon having previously been convicted of a prior felony involving the use or attempted use of violence, which at the time of the offense was a Class C felony. *See* Tenn. Code Ann. § 39-17-1307(b)(1)(A) (2014).

The conviction stemmed from a 911 "'armed party'" call from the Defendant's mother's home. *Benson,* 2018 WL 4562928, at *1. Upon their arrival, Memphis police officers found only two individuals present: "the intoxicated, belligerent Defendant" and "the Defendant's frail mother[.]" *Id.* The Defendant's mother gave the officers consent to search the home, and the officers discovered an automatic handgun underneath the mattress in the Defendant's bedroom and a .40 caliber shell casing outside the home. *Id.* Among the evidence presented at trial was the testimony of the responding officers and an agreed stipulation that the Defendant had prior convictions for aggravated assault and burglary of a building. *Id.*

Despite the trial court's repeated attempts to dissuade him, the Defendant insisted on representing himself at the sentencing hearing, the motion for new trial, and in his direct appeal. *Id.* at *1-2. The Defendant asserted on direct appeal that "the prosecutor violated his right to a fair trial by using 'improper methods calculated to produce a wrongful conviction[,]' and that the trial court improperly 'interfered in trial proceedings.'" *Id.* at *2. We affirmed the conviction after concluding that the Defendant "waived consideration of his issues for failure to provide an adequate brief." *Id.* at *3. We noted that our decision to treat the issues as waived was "made easier by our review of the record, which reveal[ed] no errors in the trial court's rulings and absolutely nothing that even approaches prosecutorial or judicial misconduct." *Id.*

On September 29, 2021, the Defendant filed a motion to correct an illegal sentence pursuant to Tennessee Rule of Criminal Procedure 36.1, which was summarily denied by the trial court on October 4, 2021 for failure to state a colorable claim. In that first motion, the Defendant apparently alleged that his sentence was illegal because the trial court failed to instruct the jury on every element of the crimes. The Defendant did not appeal the trial court's denial of that first Rule 36.1 motion.

On August 5, 2022, the Defendant filed a second pro se "Motion to Correct Illegal Sentence" in which he asserted that because his previous motion raised a colorable claim, the trial court erred in denying it without a hearing or the appointment of counsel. On September 6, 2022, the trial court entered an order summarily denying the motion. The order states in part:

> This instant motion merely alleges that the defendant disagrees with this court's ruling [denying first Rule 36.1 motion for failure to state a colorable claim]. This motion as well is therefore denied for failure to state any colorable claim, as this matter has been previously decided against the defendant.
>
> IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that this second Motion to Correct Illegal Sentence is hereby denied as well without a hearing, pursuant to Tenness Rules of Criminal Procedure 36.1(b)(2), for failure to state a colorable claim.

On December 16, 2022, the Defendant filed an untimely notice of appeal to this court.

ANALYSIS

The Defendant argues on appeal that "[t]he trial court erred in imposing a Class C felony convictions [sic] for employing of a firearm during the commission of or attempt to commit a dangerous felony when he was convicted only of possessing such a firearm, Class D felony." The State responds by arguing, among other things, that the appeal should be dismissed because there is no appeal as of right from the denial of a motion to reconsider. We agree with the State.

Although he styled it as a "Motion to Correct Illegal Sentence," it is clear that the Defendant's August 5, 2022 motion is merely an attempt to have the trial court reconsider its denial of the Defendant's previous motion to correct an illegal sentence, which the Defendant did not appeal. The Defendant has no appeal as of right from the trial court's denial of a motion to reconsider an order. *See* Tenn. App. P. 3(b). Thus, even if the Defendant's notice of appeal to this court had been timely, we would have no jurisdiction to entertain the appeal. Accordingly, we dismiss the appeal for lack of jurisdiction.

CONCLUSION

Based on the foregoing, we dismiss the appeal for lack of jurisdiction.

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JOHN W. CAMPBELL, SR., JUDGE