

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs June 6, 2023

FILED

06/23/2023

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. CHARLES ANDERSON CLARK, JR.

**Appeal from the Circuit Court for Henderson County
No. 13-001-1 Roy B. Morgan, Jr., Senior Judge**

No. W2022-01372-CCA-R3-CD

The pro se Petitioner, Charles Anderson Clark, Jr., appeals the denial of his motion to correct an illegal sentence pursuant to Tennessee Rule of Criminal Procedure 36.1. Based on our review, we affirm the judgment of the trial court.

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

JOHN W. CAMPBELL, SR., J., delivered the opinion of the court, in which J. ROSS DYER and TOM GREENHOLTZ, JJ., joined.

Charles Anderson Clark, Jr., Hartsville, Tennessee, Pro Se.

Jonathan Skrmetti, Attorney General and Reporter; and Mary Elizabeth King, Assistant Attorney General, for the appellee, State of Tennessee.

OPINION

FACTS

In 2013, the Petitioner was convicted by a Henderson County Circuit Court jury of rape, a Class B felony, and was sentenced by the trial court as a Range III, persistent offender to twenty-five years at 100% in the Department of Correction. “At the sentencing hearing, the parties stipulated, and the trial court agreed, that the [Petitioner] was a Range III, persistent offender” and the State introduced certified copies of the Petitioner’s twenty prior felony convictions. *See State v. Charles Anderson Clark, Jr.*, No. W2014-00445-

CCA-R3-CD, 2014 WL 7204525, at *6 (Tenn. Crim. App. Dec. 17, 2014), *no perm. app. filed*. On appeal, the Petitioner did not challenge his status as a Range III offender but argued that the trial court imposed an excessive sentence because none of his prior felony offenses were violent. *Id.* at *5. This court disagreed, affirming the Petitioner’s conviction and sentence. *Id.* at *1.

In November 2018, the Petitioner filed a pro se petition for writ of habeas corpus, “alleging that he was improperly sentenced as a Range III offender without proper notice in contravention of Tennessee Code Annotated section 40-35-202(a).” *Charlie Clark v. State*, No. M2019-01212-CCA-R3-HC, 2020 WL 2036650, at *1 (Tenn. Crim. App. Apr. 28, 2020), *no perm app. filed*. The habeas corpus court denied the petition for failure to state a colorable claim, and this court affirmed the judgment of the habeas corpus court. *Id.*

On September 12, 2018, the Petitioner filed a pro se Rule 36.1 motion to correct an illegal sentence, alleging that he was illegally sentenced because the State failed to file timely notice of enhancement factors or intent to seek consecutive sentences and because the Petitioner was a Range I offender who never consented to being sentenced as a Range III, persistent offender. On September 18, 2018, the trial court entered an order summarily dismissing the motion for failure to state a colorable claim, noting that Rule 36.1 cannot be used to attack a sentence based upon alleged defects in the State’s notice of enhanced sentencing. The trial court concluded that it could not treat the matter as a petition for post-conviction relief because the statute of limitations had expired, and the Petitioner had filed a previous petition for post-conviction relief, which had been denied. The trial court also concluded that it could not treat the matter as a petition for writ of error coram nobis because the statute of limitations had expired and the sentencing issue raised by the Petitioner did not constitute newly discovered evidence. Finally, the trial court concluded that it could not treat the matter as a petition for writ of habeas corpus because the Petitioner had not filed it in the county closest to the Petitioner and the issue was not a cognizable claim for habeas corpus relief.

On August 8, 2022, the pro se Petitioner filed the “Motion to Correct Illegal Sentence” that forms the basis for the instant appeal. In the instant Rule 36.1 motion, the Petitioner alleges that the trial court illegally sentenced him as a Range III, persistent offender, in contravention of Tennessee Code Annotated section 40-35-107, because he did not have the requisite number of prior Class B felony convictions to be classified as a Range III offender. On March 23, 2022, the trial court entered an order in which it denied the motion and incorporated by reference the findings of fact and conclusions of law in its summary dismissal of the Petitioner’s earlier Rule 36.1 claim. This appeal followed.

ANALYSIS

Rule 36.1 provides “a mechanism for the defendant or the State to seek to correct an illegal sentence.” *State v. Brown*, 479 S.W.3d 200, 208-09 (Tenn. 2015). An illegal sentence is defined as “one that is not authorized by the applicable statutes or that directly contravenes an applicable statute.” Tenn. R. Crim. P. 36.1(a). When a defendant files a motion under Rule 36.1, the trial court must determine whether the motion “states a colorable claim that the unexpired sentence is illegal.” Tenn. R. Crim. P. 36.1(b).

In the context of Rule 36.1, a colorable claim is a claim that, “if taken as true and viewed in a light most favorable to the moving party, would entitle the moving party to relief under Rule 36.1.” *State v. Wooden*, 478 S.W.3d 585, 593 (Tenn. 2015). Our supreme court has classified the three categories of sentencing errors: clerical errors (those arising from a clerical mistake in the judgment sheet), appealable errors (those for which the Sentencing Act specifically provides a right of direct appeal), and fatal errors (those so profound as to render a sentence illegal and void). *Id.* at 594-95. Fatal errors are “sentences imposed pursuant to an inapplicable statutory scheme, sentences designating release eligibility dates where early release is statutorily prohibited, sentences that are ordered to be served concurrently where statutorily required to be served consecutively, and sentences not authorized by any statute for the offenses.” *Id.* Only fatal errors render sentences illegal. *Id.*

The range classification issue raised by the Petitioner is an appealable error that is not cognizable in a Rule 36.1 motion. As such, we affirm the judgment of the trial court denying the motion. *See, e. g., State v. Jesus Baltazar Diaz, aka Eugene Ruano Diaz*, No. M2016-02187-CCA-R3-CD, 2017 WL 2800148, at *2 (Tenn. Crim. App. June 28, 2017), *no perm. app. filed* (“Finally, Defendant’s claim that . . . his offender classification is incorrect is classified as an appealable error and therefore not proper for a Rule 36.1 motion.”); *State v. Michael Williams*, No. W2015-00662-CCA-R3-CD, 2016 WL 1385613, at *2 (Tenn. Crim. App. Apr. 6, 2016), *no perm. app. filed* (“Although the Petitioner may have contested the propriety of his offender classification on direct appeal, Rule 36.1 is not an alternative mechanism to challenge the findings of the trial court.”).

CONCLUSION

Based on our review, we conclude that the trial court properly denied the Rule 36.1 motion. Accordingly, we affirm the judgment of the trial court.

JOHN W. CAMPBELL, SR., JUDGE