

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

FILED

06/08/2023

Clerk of the  
Appellate Courts

**MARCUS JOHNSON v. KEVIN GENOVESE, WARDEN**

**Appeal from the Circuit Court for Lake County**  
**No. 22-CR-10832 Mark L. Hayes, Judge**

---

**No. W2022-00752-CCA-R3-HC**

---

Marcus Johnson, Petitioner, sought habeas corpus relief for the third time after his convictions for one count of felony murder, one count of especially aggravated robbery, and one count of aggravated assault. *See State v. Marcus Johnson*, No. W2002-00987-CCA-R3-CD, 2003 WL 22080778, at \*14 (Tenn. Crim. App. Sept. 4, 2003), *perm. app. denied* (Tenn. Jan. 26, 2004); *Marcus Johnson v. State*, No. W2007-02664-CCA-R3-PC, 2008 WL 4866817, at \*2 (Tenn. Crim. App. Nov. 10, 2008), *no perm. app. filed*. The petition was dismissed without a hearing after the habeas corpus court determined that Petitioner was merely raising issues that had previously been litigated. We determine that the habeas corpus court properly dismissed the petition and affirm the judgment of that court.

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

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

Marcus Johnson, Tiptonville, Tennessee, Pro Se.

Jonathan Skrmetti, Attorney General and Reporter; Andrew Craig Coulam and Abigail H. Rinard, Assistant Attorneys General, for the appellee, State of Tennessee.

**OPINION**

Nearly 23 years ago, Petitioner and a codefendant robbed the Discount Shop in Memphis. During the robbery, the store manager and a store clerk were shot. *Marcus*

*Johnson*, 2003 WL 22080778, at \*1. The store clerk died as a result of his injuries. *Id.* Petitioner was convicted of felony murder and two counts of especially aggravated robbery. *Id.* On direct appeal, this Court affirmed the felony murder conviction and one conviction for especially aggravated robbery. The other especially aggravated robbery conviction was modified to aggravated assault and remanded to the trial court for resentencing based on double jeopardy. *Id.*

Petitioner unsuccessfully sought an appeal to the Tennessee Supreme Court as well as post-conviction relief based on ineffective assistance of counsel. *Marcus Johnson*, 2008 WL 4866817, at \*1. Then, Petitioner filed a pro se “Rule [36.1] Motion To Correct An Illegal Sentence/ State Habeas Corpus and/or Post-Conviction Relief” petition. He was unsuccessful in the trial court. *Marcus Johnson v. State*, No. W2019-02289-CCA-R3-PC, 2021 WL 1174731, at \*1 (Tenn. Crim. App. Mar. 29, 2021), *no perm. app. filed*. On appeal, this Court remanded to the trial court for entry of an order reflecting the trial court’s findings of fact and conclusions of law related to each of Petitioner’s claims and to whether Petitioner had attempted to reopen his post-conviction petition.

On remand, the trial court entered a new order, again denying the petition. Petitioner filed a second habeas petition in March of 2022. This petition was summarily dismissed for failing to comply with Tennessee Code Annotated section 41-21-805.

In April of 2022, Petitioner filed another habeas corpus petition. In the petition he argued that his life sentence was void and illegal, the judgment forms were void, and his convictions violated double jeopardy. Petitioner did not attach his second petition for habeas relief, claiming that it was the “same” as his prior petition. The habeas corpus court dismissed the petition concluding that despite the petitioner’s attempt to raise three grounds for relief, the “three arguments made” really “support one ground: Petitioner believes that his Shelby County sentences are illegal because he is not eligible for parole consideration.” The habeas corpus court determined that another court denied relief on “this exact issue,” so Petitioner was not entitled to relief. Petitioner appealed.

### *Analysis*

On appeal, Petitioner argues that the habeas corpus court erred in denying relief where his judgments are void because his life sentence does not allow for parole eligibility in violation of Tennessee Code Annotated sections 40-35-501 and 40-28-115 as well as *State v. Booker*, 656 S.W.3d 49 (Tenn. 2022). The State insists that the habeas corpus court properly dismissed the petition where the issues had already been litigated and Petitioner’s claims were meritless.

In Tennessee, “[a]ny person imprisoned or restrained of his liberty, under any pretense whatsoever . . . may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment and restraint.” T.C.A. § 29-21-101. While there is no statute of limitations for filing a petition for a writ of habeas corpus, the grounds upon which relief may be granted are narrow. *Hickman v. State*, 153 S.W.3d 16, 20 (Tenn. 2004). Habeas corpus relief is only available when it appears on the face of the judgment or record of the proceedings that the convicting court was without jurisdiction or that the defendant is still imprisoned despite the expiration of his sentence. *Id.*; *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993). In other words, habeas corpus relief may be granted only when the judgment of conviction is void, rather than merely voidable. *Summers v. State*, 212 S.W.3d 251, 255 (Tenn. 2007). A void judgment is “one that is facially invalid because the court did not have the statutory authority to render such judgment.” *Id.* at 256 (citing *Dykes v. Compton*, 978 S.W.2d 528, 529 (Tenn. 1998)). A voidable judgment is “one that is facially valid and requires proof beyond the face of the record or judgment to establish its invalidity.” *Id.*

A petition for habeas corpus relief should name the person causing the illegal restraint, ordinarily the warden, and must identify and provide copies of prior habeas petitions. T.C.A. § 29-21-107(b)(1), (4). A trial court can dismiss a petition for habeas relief for failure to follow these procedures alone. *See, e.g., Davis v. State*, 261 S.W.3d 16, 20 (Tenn. Crim. App. 2008); *Ricardo Davidson v. Avril Chapman, Warden*, No. M2014-00565-CCA-R3-HC, 2014 WL 7011499, at \*2 (Tenn. Crim. App. Dec. 12, 2014), *no perm. app. filed*.

Here, the habeas corpus court properly dismissed the petition. The habeas corpus court could have dismissed the petition for failing to attach a copy of his prior petition to the petition at issue herein because Petitioner’s assertion that the petition was the “same” as a prior petition does not excuse Petitioner from the “mandatory” requirements of the statute. *Summers*, 212 S.W.3d at 260. Instead, the habeas corpus court dismissed the petition because Petitioner raised an identical complaint to his sentence and a double jeopardy argument that he raised in a prior petition. A habeas petition is not the proper place to relitigate issues that have been previously ruled upon. Under the “law of the case” doctrine, issues which have been previously determined on appeal cannot be reconsidered. *Memphis Publ’g Co. v. Tenn. Petroleum*, 975 S.W.2d 303, 306 (Tenn. 1998). “This rule promotes the finality and efficiency of the judicial process, avoids indefinite relitigation of the same issue, fosters consistent results in the same litigation, and assures the obedience of lower courts to the decisions of appellate courts.” *Id.* (quoting *Ladd v. Honda Motor Co.*, 939 S.W.2d 83, 90 (Tenn. Ct. App. 1996)).

*Conclusion*

For the foregoing reasons, the judgment of the habeas corpus court is affirmed.

---

TIMOTHY L. EASTER, JUDGE