

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs January 10, 2023

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ALEXANDER CARINO v. STATE OF TENNESSEE

**Appeal from the Circuit Court for Trousdale County
No. 2022-CV-4973 Michael Wayne Collins, Judge**

No. M2022-01036-CCA-R3-HC

Petitioner, Alexander Carino, appeals from the Trousdale County Circuit Court’s dismissal of his second petition for writ of habeas corpus. He alleges that the habeas corpus court erred by summarily denying his petition without advising him of his right to counsel or appointing counsel and that his judgments for second-degree murder are void because the affidavits of complaint were not “properly authenticated” because they did not contain a court seal. Petitioner further alleges for the first time on appeal that the affidavits of complaint contain an insufficient factual basis to support a finding of probable cause. Following our review of the entire record and the briefs of the parties, we affirm the judgment of the habeas corpus court.

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

JILL BARTEE AYERS, J., delivered the opinion of the court, in which ROBERT L. HOLLOWAY, JR., and TIMOTHY L. EASTER, JJ., joined.

Alexander R. Carino, Hartsville, Tennessee, Pro Se.

Jonathan Skrmetti, Attorney General and Reporter; T. Austin Watkins, Senior Assistant Attorney General, for the appellee, State of Tennessee.

OPINION

Factual and Procedural Background

Petitioner and his co-defendants were indicted by a Cumberland County Grand jury for two counts of first-degree felony murder committed “during the attempted perpetration

of an especially aggravated robbery” and one count of especially aggravated robbery. *Alexander R. Carino v. State*, No. M2017-00345-CCA-R3-HC, 2017 WL 3311196, at *1 (Tenn. Crim. App. Aug. 3, 2017). The offenses were committed on November 7, 2008, during a home invasion in Crossville. In 2010, Petitioner pled guilty in the Cumberland County Circuit Court to two counts of second-degree murder and was sentenced to an effective forty-three-year sentence to be served in confinement at 100 percent. The especially aggravated robbery count was dismissed as part of the plea agreement. Petitioner did not pursue a direct appeal. *Id.* He filed his first petition for writ of habeas corpus alleging that his second-degree murder convictions were void because the trial court lacked jurisdiction to enter the judgments against him. He also argued that he did not knowingly and voluntarily waive the trial court’s lack of jurisdiction. *Id.* The trial court summarily denied relief, concluding that Petitioner’s “allegations were ‘devoid of any support questioning the trial court’s jurisdiction to act.’” The habeas corpus court determined that the trial court ‘clearly had jurisdiction’ and that the judgments were not void.” *Id.* This court affirmed the habeas corpus court’s summary denial of the first habeas corpus petition. *Id.*

Petitioner also filed two subsequent petitions for post-conviction relief that were each summarily dismissed by the post-conviction court as being untimely filed. This court affirmed the dismissal of the two petitions. *Alexander R. Carino v. State*, No. E2020-01435-01435-CCA-R3-PC, 2021 WL 1541539 (Tenn. Crim. App. April 20, 2021); *Alexander R. Carino v. State*, No. E2018-00775-CCA-R3-PC, 2018 WL 5780231 (Tenn. Crim. App. Nov. 2, 2018).

On March 31, 2022, Petitioner filed the present *pro se* petition for writ of habeas corpus, his second¹, alleging that his judgments were void due to a due process violation. More specifically, Petitioner argued that the judicial commissioners who issued the “[a]ffidavit of [c]omplaint/[a]rrest [w]arrants” in the general sessions court on November 8, 2008, for felony murder, and on November 10, 2008, for conspiracy to commit aggravated robbery, did so without properly affixing a court seal as required by Tennessee Code Annotated section 18-6-114.

The State filed a response to Petitioner’s petition arguing that there was no error in the affidavits of complaint and that even if there were an error, it would at most render the judgments voidable but not void. The habeas corpus court agreed finding that a “court seal

¹ We note that Petitioner did not attach a copy of his first habeas corpus petition and therefore, did not comply with the procedural requirements of the applicable statutes. However, this issue was not addressed by the trial court or raised by the State on appeal and will not be addressed by this court. *See State v. Bristol*, 654 S.W.3d 917, 924-30 (Tenn. 2022) (holding that intermediate appellate courts generally should not consider issues that were not raised and briefed by the parties until after the parties have notice and opportunity to respond).

was not required for the judicial commissioner to make a valid probable cause determination” in accordance with Rule 3 of the Tennessee Rules of Criminal Procedure. The court further found that “any error in those documents would not have deprived the circuit court of jurisdiction to accept Petitioner’s guilty pleas and would not have rendered the judgments void.”

Analysis

Article I, Section 15 of the Tennessee Constitution guarantees the right to seek habeas corpus relief. However, the grounds upon which habeas relief may be granted are narrow. *Taylor v. State*, 995 S.W.2d 78, 83 (Tenn. 2000). Relief is available only when “it appears upon the face of the judgment or the record of the proceeding upon which the judgment is rendered” that a convicting court lacked jurisdiction or authority to sentence a petitioner or that a petitioner’s sentence of imprisonment or other restraint has expired. *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993). A habeas petition must challenge void and not merely voidable judgments. *Summers v. State*, 212 S.W.3d 251 (Tenn. 2007). A void judgment is “one that is facially invalid because the court did not have the statutory authority to render such judgment,” while 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.* at 256. Objections to a defective indictment “that go to matters of form rather than substance” must be raised before trial, or the issue will be deemed waived.” *Billy L. Grooms v. State*, No. E2014-01228-CCA-R3-HC, 2015 WL 1396474, at *3 (Tenn. Crim. App. Mar. 25, 2015).

The burden is on the petitioner “to show by a preponderance of the evidence that the sentence is void or that the confinement is illegal.” *Wyatt v. State*, 24 S.W.3d 319, 322 (Tenn. 1998). A trial court may dismiss a habeas corpus petition without a hearing if the petition fails to establish that the challenged judgment is void. T.C.A. § 29-21-109; *Hickman v. State*, 153 S.W.3d 16, 20 (Tenn. 2004).

First, Petitioner has not shown that there were any errors on the affidavits of complaint or arrest warrants in this case. He relies on Tennessee Code Annotated section 18-6-114(a) to support his claim that the affidavits of complaint were not “properly authenticated” and rendered his judgments “void and illegal.” However, the statute relied upon by Petitioner governs oaths and affirmations administered by county clerks and not the judicial commissioners who determined probable cause for the affidavits of complaint and issued the warrants in this case. Judicial commissioners and county clerks are not the same. *See* Tenn. R. Crim. P. 1 (e)(3); T.C.A. § 40-5-201. Furthermore, the requirements for an affidavit of complaint are set forth in Rule 3 of the Tennessee Rules of Criminal Procedure, which does not require or even mention a court seal. Tenn. R. Crim. P. 3(b) (an affidavit of complaint must “be made on oath before a magistrate or a neutral and detached

court clerk authorized by Rule 4 to make a probable cause determination”). Petitioner has not identified, nor have we found any authority that supports Petitioner’s claim that a court seal was required under Tennessee Code Annotated section 18-6-114(a)(2) for the affidavits of complaint or arrest warrants in this case.

Moreover, as argued by the State, even if the omission of the court seal on the affidavits of complaint or arrest warrants was error, Petitioner is not entitled to habeas corpus relief because “a valid indictment cures any defect in a warrant” or an affidavit of complaint. *Tommy Taylor v. Fitz*, No. W2020-01294-CCA-HC, 2021 WL 4077031, at *3 (Tenn. Crim. App. Sept. 8, 2021) *perm. app. denied* (Tenn. Dec. 8, 2021). Petitioner does not challenge the validity of the indictment that followed the general sessions court proceedings. Additionally, “[a] defendant who enters a plea of guilty waives all nonjurisdictional defects and constitutional infirmities.” *State v. Yoreck*, 133 S.W.3d 606, 612 (Tenn. 2004). The lack of a court seal on the affidavits of complaint and arrest warrants would at most render judgments in this case voidable but not void. *See Bruce Elliott v. State*, No. M2018-00808-CCA-R3-HC, 2018 WL 6528712, at *2 (Tenn. Crim. App. Dec. 12, 2018) (“The Petitioner’s contention that he was arrested on a defective warrant, therefore, would render his judgment voidable, rather than void.”) (citations omitted).

We note that Petitioner also argues that there was an insufficient factual basis in the affidavits of complaint to support a finding of probable cause. This claim is waived because it was raised for the first time on appeal. *Cauthern v. State*, 145 S.W.3d 571, 599 (Tenn. Crim. App. 2004).

Finally, Petitioner argues that the habeas corpus court violated Tennessee Supreme Court Rule 13 by summarily dismissing his habeas corpus petition without advising him of his right to counsel and by not appointing counsel. Supreme Court Rule 13(d)(1)(C) provides that an indigent petitioner in a state habeas corpus proceeding may have appointed counsel. However, “[t]here is no federal or state constitutional right to counsel in a habeas corpus proceeding.” *Summers*, 212 S.W.3d at 260. “Appointment of counsel in a state habeas corpus proceeding is within the trial court’s discretion.” *Id.* (citing T.C.A. § 40-14-204). If a petitioner does not state a cognizable claim for relief, then the appointment of counsel is not necessary. *Hickman*, 153 S.W.3d at 20. Having concluded that there were no errors on the affidavits of complaint or arrest warrants, Petitioner in this case did not state a cognizable claim; accordingly, he was not entitled to the appointment of counsel. *Id.*; *Summers*, *supra*.

We conclude that the trial court acted within its discretion by summarily denying the petition for writ of habeas corpus. Petitioner is not entitled to relief.

CONCLUSION

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

JILL BARTEE AYERS, JUDGE