

FILED

10/25/2023

Clerk of the
Appellate Courts

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs October 10, 2023

STATE OF TENNESSEE v. LANCE T. SANDIFER

Appeal from the Criminal Court for Davidson County

No. 2007-A-591 Steve R. Dozier, Judge

No. M2023-00477-CCA-R3-CD

The Defendant, Lance T. Sandifer, appeals the trial court's summary dismissal of his motion to correct an illegal sentence pursuant to Tennessee Rule of Criminal Procedure 36.1. In his motion, the Defendant argued that his sentences were illegal because he was not granted a juvenile transfer hearing and that the criminal court, therefore, lacked subject matter jurisdiction over him. Following our review, we affirm.

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

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

Lance T. Sandifer, Hartsville, Tennessee, Pro Se.

Jonathan Skrmetti, Attorney General and Reporter; Lacy E. Wilber, Senior Assistant Attorney General; and Glenn R. Funk, District Attorney General, for the appellee, State of Tennessee.

OPINION

Based upon events that took place on November 7, 2006, a Davidson County jury convicted the Defendant of two counts of aggravated robbery, one count of aggravated burglary, four counts of aggravated rape, one count of attempted aggravated rape, and two counts of especially aggravated kidnapping. *See State v. Sandifer*, No. E2007-02498-CCA-R3-CD, 2010 WL 5343202, at *1 (Tenn. Crim. App. Dec. 21, 2010), *perm. app. denied* (Tenn. May 26, 2011). In October 2008, the Defendant received an effective sentence of one hundred and eight years in confinement for these convictions. *Id.* His subsequent challenges on direct appeal and post-conviction were unsuccessful. *See id.* (direct appeal);

Sandifer v. State, No. M2013-00723-CCA-R3-PC, 2014 WL 5502404, at *1 (Tenn. Crim. App. Oct. June 31, 2014) (post-conviction), *perm. app. denied* (Tenn. Mar. 11, 2015).

On January 18, 2023, the pro se Defendant filed a motion to correct an illegal sentence pursuant to Tennessee Rule of Criminal Procedure 36.1, arguing that his sentences were illegal because he was not provided a juvenile transfer hearing, as were two of his codefendants. The Defendant submits that the criminal court did not have subject matter jurisdiction to prosecute him and cites Tennessee Code Annotated sections 37-1-102(b)(5)(G) (defining “child” to include a person over the age of eighteen who is “allowed to remain under the continuing jurisdiction of the juvenile court for purposes of the voluntary extension of services pursuant to § 37-2-417”); 37-1-134(e) (stating that “[n]o child, either before or after reaching eighteen (18) years of age, shall be prosecuted for an offense previously committed unless the case has been transferred as provided in subsection (a)”); and 37-2-417 (“Tennessee’s Transitioning Youth Empowerment Act of 2010”).¹ The trial court summarily dismissed the motion, finding that the Defendant was nineteen years, two months, and two days in age when the crimes were committed and that, therefore, no juvenile transfer hearing was required for the criminal court to have subject matter jurisdiction over the Defendant.

On appeal, the Defendant, citing to the same statutes as he did in his motion, argues that the trial court erred by summarily dismissing his motion because he “was a ward of the state, in DCS custody at the time of the alleged offenses,” requiring a juvenile transfer hearing. According to the Defendant, the trial court was aware of the Defendant’s “DCS Independent Living services status, as [his] prior crimes in DCS custody were used to enhance [his] sentence.”

Tennessee Rule of Criminal Procedure 36.1 provides a mechanism to a defendant or the State to seek correction of an illegal sentence. Tenn. R. Crim. P. 36.1(a); *State v. Brown*, 479 S.W.3d 200, 208-09 (Tenn. 2015). An illegal sentence under this rule is “one that is not authorized by the applicable statutes or that directly contravenes an applicable statute.” Tenn. R. Crim. P. 36.1(a)(2). The term “illegal sentence” “is synonymous with the *habeas corpus* concept of a ‘void’ sentence.” *Cox v. State*, 53 S.W.3d 287, 292 (Tenn. Crim. App. 2001), *overruled on other grounds*, *Moody v. State*, 160 S.W.3d 512 (Tenn. 2005).

When a Rule 36.1 motion is filed, the trial court must determine whether the movant has stated a colorable claim that the sentence is illegal. Tenn. R. Crim. P. 36.1(b). A colorable claim under Rule 36.1 is “a claim that, if taken as true and viewed in a light most

¹ Section 37-2-417 was repealed by 2022 Tenn. Pub. Acts, ch. 785, § 1, effective January 1, 2023.

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). “[W]hen determining whether a Rule 36.1 motion sufficiently states a colorable claim, a trial court may consult the record of the proceeding from which the allegedly illegal sentence emanated.” *Id.* at 594. A trial court may summarily dismiss a Rule 36.1 motion if the movant fails to state a colorable claim for relief. Tenn. R. Crim. P. 36.1(b)(2). Whether a movant’s Rule 36.1 motion states a colorable claim is a question of law that we review de novo. *Wooden*, 478 S.W.3d at 589.

Here, the trial court observed that the Defendant’s date of birth was September 4, 1987, and that the indictments reflected an offense date of November 7, 2006. The record, which includes the indictment and judgment forms, supports the trial court’s calculation that the Defendant was nineteen years, two months, and two days in age when the crimes were committed. Accordingly, a juvenile transfer hearing was not required for the criminal court to obtain subject matter jurisdiction over the Defendant. *See* Tenn. Code Ann. § 37-1-134(e). Any continuance in DCS programs after the Defendant’s eighteenth birthday does not change this fact. *See generally* Tenn. Code Ann. §§ 37-1-102(b)(3) (defining adult), -102(b)(5)(a) (defining child). Moreover, the Tennessee’s Transitioning Youth Empowerment Act cited by the Defendant as authority that he remained in DCS custody was not enacted until 2010, after the Defendant’s indictment and sentencing in this case. *See* Tenn. Code Ann. § 37-2-417.

Regardless, even if the Defendant had been considered a juvenile at the time of the offenses, the failure of the juvenile court to conduct a transfer hearing prior to his indictment in the criminal court would not deprive the criminal court of jurisdiction. *See State v. Frederick Robinson, Jr.*, No. M2020-01004-CCA-R3-CD, 2021 WL 2701777, at *2 (Tenn. Crim. App. June 30, 2021) (citing *State v. Hale*, 833 S.W.2d 65, 67-68 (Tenn. 1992) (holding that the failure by a juvenile court to conduct a transfer hearing is a procedural defect which does not deprive a criminal court of jurisdiction and that a defendant’s failure to raise the issue before trial results in waiver)), *perm. app. denied* (Tenn. Oct. 13, 2021). Consequently, the criminal court’s sentence is not illegal for lack of jurisdiction, and the Defendant has not established a colorable claim for relief pursuant to rule 36.1. *See id.*

Accordingly, we discern no error in the trial court’s summary dismissal of the Defendant’s Rule 36.1 motion. We affirm the judgment of the trial court.

KYLE A. HIXSON, JUDGE