

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs April 25, 2023

FILED
06/08/2023
Clerk of the
Appellate Courts

STATE OF TENNESSEE v. BILLY W. LOCKE

**Appeal from the Criminal Court for McMinn County
Nos. 20CR175, 20CR216 Andrew M. Freiberg, Judge**

No. E2022-01177-CCA-R3-CD

Defendant, Billy W. Locke, appeals from the trial court’s summary dismissal of his two motions to correct an illegal sentence filed pursuant to Rule 36.1 of the Tennessee Rules of Criminal Procedure. Following our review of the briefs of the parties, the record, and the applicable authorities, we affirm the judgments of the trial court pursuant to Court of Criminal Appeals Rule 20.

**Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal
Court Affirmed Pursuant to Rule 20, Rules of the Court of Criminal
Appeals**

TIMOTHY L. EASTER, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., P.J., and TOM GREENHOLTZ, J., joined.

Billy W. Locke, Pro Se, Wartburg, Tennessee.

Jonathan Skrmetti, Attorney General and Reporter; Brooke A. Huppenthal, Assistant Attorney General; Stephen D. Crump, District Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

Defendant was convicted, following two bench trials in the McMinn County Criminal Court, of two counts of evading arrest while operating a motor vehicle, a Class E felony; driving on a revoked license, a Class B misdemeanor, and reckless endangerment, a Class A misdemeanor. *State v. Billy Wayne Locke*, No. E2021-00482-CCA-R3-CD, 2022 WL 3973661, at *1 (Tenn. Crim. App. Sept. 1, 2022), *no perm. app. filed*. Defendant

received an agreed-upon sentence of “six years [in the Department of Correction] at 60% as required by his career offender status, followed by six years on paper.” *Id.* Upon questioning by the trial court, Defendant “acknowledged his acceptance and understanding of” the sentencing agreement and waived his right to an appeal of his convictions and sentence. *Id.* Defendant filed a pro se notice of appeal challenging the sufficiency of the evidence, and a panel of this Court dismissed the appeal, finding that Defendant had knowingly and voluntarily waived his right to appeal. *Id.*

Defendant subsequently filed a pro se motion to correct an illegal sentence pursuant to Rule 36.1 of the Tennessee Rules of Criminal Procedure. In his motion, Defendant claimed that “[t]he running of his [f]ederal supervised release probation[ary] period was interrupted by the issuance of a revocation warrant, and this was [illegally] used to enhance [Defendant’s] sentence” in the instant cases. Defendant thereafter filed an “Addendum” to his Rule 36.1 motion, asserting that his sentences were illegally enhanced using prior convictions that were more than 10 years old.

The trial court dismissed Defendant’s motion for failure to state a colorable claim. The court interpreted Defendant’s motion to simply state “his displeasure at his continued incarceration upon this sentence.” The court noted that Defendant “agreed to these terms of punishment by voluntary waiver of a formal sentencing hearing following his bench trials” and that “[t]he total term of punishment was satisfactory to [Defendant] when [he] agreed at the time of his waiver of sentencing.” The trial court found that Defendant’s sentence “was rendered in full conformance with all applicable law.”

Defendant filed a pro se notice of appeal in the trial court but not in this Court. Defendant subsequently filed a second pro se Rule 36.1 motion to correct an illegal sentence, asserting that the trial court illegally enhanced his sentence for driving on a revoked license using a 16-year-old DUI conviction. Defendant argued that under “the supremacy clause . . . the State[] fail[ed] to prosecute [him] under the correct statute” and asked the trial court to “dis[]miss this charge and remove it from [his] record.” The trial court entered an order dismissing Defendant’s second motion, interpreting Defendant’s argument as a challenge to the sufficiency of the evidence to support his driving on a revoked license conviction and concluding that the motion failed to state a colorable claim. Defendant filed a timely notice of appeal from that order.

In his two briefs on appeal, Defendant again asserts that his driving on a revoked license conviction should be reversed because his prior DUI conviction was more than 10 years old. Defendant argues that because the conviction was “illegal,” the resulting sentence was illegal. Defendant also asserts that he was “coerced and threatened into waiv[]ing any or all of his rights as to a jury or his appeal”; that he received “inadequate and erroneous legal advice” from his trial counsel; that he did not receive a revocation

hearing “on [his] supervised release from the feds”; and that his sentences were illegally enhanced by “the use of [his] fed[eral] probation violation.”

Rule 36.1 provides the defendant and the State an avenue to “seek to correct an illegal sentence,” defined as a sentence “that is not authorized by the applicable statutes or that directly contravenes an applicable statute.” Tenn. R. Crim. P. 36.1; *see also State v. Wooden*, 478 S.W.3d 585, 594-95 (Tenn. 2015) (holding that “the definition of ‘illegal sentence’ in Rule 36.1 is coextensive with, and not broader than, the definition of the term in the habeas corpus context”). To avoid summary denial of an illegal sentence claim brought under Rule 36.1, a defendant must “state with particularity the factual allegations,” *Wooden*, 478 S.W.3d at 594, establishing “a colorable claim that the unexpired sentence is illegal,” Tenn. R. Crim. P. 36.1(b). “[F]or purposes of Rule 36.1 . . . ‘colorable claim’ means 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.” *Wooden*, 478 S.W.3d at 593. The determination whether a Rule 36.1 “motion states a colorable claim for correction of an illegal sentence under Rule 36.1 is a question of law, to which de novo review applies.” *Id.* at 589 (citing *Summers v. State*, 212 S.W.3d 251, 255 (Tenn. 2007)).

The State asserts that Defendant has waived his claims raised in his first Rule 36.1 motion by failing to file a timely notice of appeal. Defendant filed a notice of appeal following the dismissal of his first motion to correct an illegal sentence; however, it was filed in the trial court and not this Court. The State acknowledges Defendant’s proper filing of a timely notice of appeal following the trial court’s dismissal of his second motion but asserts that “his second motion abandoned several claims raised in his first motion and ignored all claims regarding Case No. 2020-CR-216.” The State also asserts that the interests of justice do not require that the notice of appeal requirement be waived as to Defendant’s first motion because Defendant has failed to state a colorable claim for relief.

Tennessee Rule of Appellate Procedure 4(a) provides that “the notice of appeal required by Rule 3 shall be filed with the clerk of the appellate court within 30 days after the date of entry of the judgment appealed from; however, in all criminal cases the ‘notice of appeal’ document is not jurisdictional and the timely filing of such document may be waived in the interest of justice.” Tenn. R. App. P. 4(a). We note that Defendant filed his pro se notice of appeal from the dismissal of his first motion 12 days after entry of the order, but he filed it with the trial court clerk and not the appellate court clerk.¹

We need not determine whether the interests of justice require waiver of the notice filing requirement, however, because in reviewing the record before us, it is clear

¹ Tennessee Rule of Appellate Procedure 4(a) was amended on July 1, 2017, to require that the notice of appeal be filed with the appellate court clerk, instead of the trial court clerk.

Defendant failed to satisfy the procedural requirements of Rule 36.1. The rule states that the “movant must attach to the motion a copy of each judgment order at issue and may attach other relevant documents.” Tenn. R. Crim. P. 36.1(a)(1). The record shows the defendant failed to attach copies of the judgments of conviction to either of his motions filed with the trial court, and he failed to include copies of the judgments as part of the record on appeal. Absent copies of the judgments at issue, we cannot appropriately review Defendant’s claims. Moreover, regarding Defendant’s claims surrounding his federal sentence and probation revocation, the trial court noted in its order dismissing Defendant’s first motion that it had “no knowledge of any federal court process of which [Defendant] complains, and the state court sentences at bar do not mention or even contemplate any federal case or federal probation.”

Notwithstanding Defendant’s failure to meet the procedural requirements of Rule 36.1, Defendant’s claims that he received the ineffective assistance of counsel, that he was coerced into waiving his right to appeal, and his challenge to the validity of his driving on a revoked license conviction are not properly brought pursuant to a Rule 36.1 motion.

Rule 20 of the Rules of the Court of Criminal Appeals of Tennessee provides that if a judgment is rendered by the trial court without a jury, the judgment is not a determination of guilt, the evidence does not preponderate against the finding of the trial court, and no error of law requiring a reversal of the judgment is apparent on the record, then the judgment of the trial court may be affirmed by memorandum opinion when the opinion would have no precedential value. We determine that this case meets the criteria of Rule 20. Accordingly, the ruling of the trial court is hereby affirmed in accordance with Court of Criminal Appeals Rule 20.

TIMOTHY L. EASTER, JUDGE