

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs March 21, 2023

FILED

03/30/2023

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. JUAN LASEAN PERRY

Appeal from the Circuit Court for Giles County
Nos. 10029, 9717, 9870, 9945, 10168 Russell Parkes, Judge

No. M2022-00220-CCA-R3-CD

Defendant, Juan Lasean Perry, appeals the denial of his motion, filed pursuant to Tennessee Rule of Criminal Procedure 36.1, to correct an illegal sentence. Discerning no error, we affirm.

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 TOM GREENHOLTZ, JJ., joined.

John M. Schweri, Columbia, Tennessee, for the appellant, Juan Lasean Perry.

Jonathan Skrmetti, Attorney General and Reporter; Caroline Weldon, Assistant Attorney General; Brent A. Cooper, District Attorney General; and Jessica Chandler, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

On August 27, 2002, pursuant to a global plea agreement, Defendant pleaded guilty in the Giles County Circuit Court to attempted second degree murder, aggravated robbery, aggravated burglary, two counts of aggravated assault, sale of cocaine, and assault and received an effective 12 year-sentence. On April 12, 2021, Defendant filed a pro se Motion to Correct Illegal Sentence pursuant to Tennessee Rule of Criminal Procedure 36.1, alleging that his concurrent sentences as part of his plea agreement were illegal because Rule 32 of the Rules of Criminal Procedure mandated consecutive sentencing. The trial court found that Defendant had set forth a colorable claim for relief and appointed counsel. Following a hearing, the trial court denied the motion.

At the hearing on the motion, Petitioner testified that he “caught four or five charges” while he was on bond in Giles County. Defendant explained that each time he was arrested, he posted bond and was released. While out on bond, Defendant was charged with first degree murder in Maury County. While the Maury County case was pending, Defendant pleaded guilty to several charges in Giles County. Defendant testified that his trial counsel told him that his sentence in the Giles County cases “didn’t matter” because he was going to receive a life sentence in Maury County for the first degree murder conviction. Defendant was not concerned about the alignment of his Giles County sentences “because the Maury County charge was gonna possibly eat up whatever the Giles County sentence was gonna be.” Defendant ultimately was convicted in Maury County of second degree murder and received a sentence of 25 years to be served at 100 percent.

Defendant took the position that the trial court should not have accepted his guilty pleas because his sentences were run concurrently when they should have been run consecutively. When asked whether it was to his benefit, Defendant answered, “An illegal sentence is an illegal sentence. I should not have been – I’m not supposed to be able to avoid judgment. It’s a sentence that is not authorized from the law.” Defendant asserted that his pleas were not voluntary and knowing and that he would have gone to trial on the charges if he had known the outcome of his Maury County conviction. Defendant did not know the total exposure of his Giles County charges. He testified, “the way [trial counsel] explained it to me was that we could probably beat a few of the charges, but those charges were getting – they would have to stack those charges. I pled to all five charges for that reason.” When asked what relief he was seeking, Defendant stated, “I’m asking the Judge to allow me to withdraw my plea.”

On cross-examination, Defendant disagreed that he would be serving an effective 47-year sentence if his sentences were run consecutively because he would have “been given [] a presumptive sentence on everything, which would have been 8, an 8, an 8, a 2, a 5, and a 3.” Defendant agreed, however, that serving a 12-year sentence was better than serving a 47-year sentence.

At the conclusion of the hearing, the trial court found that Defendant “received the benefit of concurrent sentences” as a result of his 2002 guilty pleas. The court found that Defendant had knowledge of the pending charge in Maury County and “still chose to enter his plea[s], negotiating both reduced charges and concurrent sentences here in Giles County.” The court concluded that Defendant’s 12-year sentence expired in 2014 at the latest and that, even if the sentences had not expired, Defendant “received the benefit of the bargain in concurrent sentences in all of his Giles County cases.” Defendant timely appealed the trial court’s denial of his motion.

Rule 36.1 permits a defendant to seek correction of an unexpired illegal sentence. “[A]n illegal sentence is one that is not authorized by the applicable statutes or that directly contravenes an applicable statute.” Tenn. R. Crim. P. 36.1(a). Our supreme court interpreted the meaning of “illegal sentence” as defined in Rule 36.1 and concluded that the definition “is coextensive, and not broader than, the definition of the term in the habeas corpus context.” *State v. Wooden*, 478 S.W.3d 585, 594-95 (Tenn. 2015). The *Wooden* court then reviewed 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.* Commenting on appealable errors, the court stated that those “generally involve attacks on the correctness of the methodology by which a trial court imposed sentence.” *Id.* In contrast, fatal errors include “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.* The court held that only fatal errors render sentences illegal. *Id.* A trial court may summarily dismiss a Rule 36.1 motion if it does not state a colorable claim for relief. Tenn. R. Crim. P. 36.1(b)(2).

Defendant committed a number of offenses while out on bond; therefore, the sentences he received for those offenses were statutorily required to be served consecutively. As such, the concurrent sentences he received for such offenses were illegal sentences. *See State v. Jarvis D. Cohen*, No. W2016-01320-CCA-R3-CD, 2017 WL 2805206, at *2 (Tenn. Crim. App. June 28, 2017), *perm. app. denied* (Tenn. Nov. 17, 2017) (citing *Wooden*, 478 S.W.3d at 595). However, our supreme court has concluded that Rule 36.1 “does not authorize the correction of expired illegal sentences.” *State v. Brown*, 479 S.W.3d 200, 211 (Tenn. 2015). Defendant’s effective 12-year sentence imposed in 2002 would have expired long before the filing of his motion in April 2021. This Court has no authority to correct an expired sentence, whether illegal or not.

Moreover, Rule 36.1(c)(3)(A) and (B) provides in relevant part:

If the court determines that the illegal sentence was entered pursuant to a plea agreement, the court shall determine whether the illegal aspect of the sentence was a material component of the plea agreement. If the illegal aspect was not a material component of the plea agreement, the court shall file an order granting the motion and also shall enter an amended uniform judgment document, see Tenn. Sup. Ct. R. 17, setting forth the correct sentence. If the illegal aspect was a material component of the plea agreement but the illegal aspect was to the defendant’s benefit, the court shall enter an order denying the motion.

Tenn. R. Crim. P. 36(c)(3)(A) and (B).

The comments to Rule 36.1 emphasize that if a defendant receives the benefit of concurrent sentencing as part of a bargained-for plea agreement, he is not entitled to relief:

Subdivision (c)(3) is revised to limit the circumstances under which relief may be granted where the defendant has entered into a plea bargain which contains an illegal sentence. As revised, the rule provides that the court shall deny the motion if the defendant benefitted from the bargained-for illegal sentence. For example, if the illegal provision was for the sentence to run concurrently with another sentence, when the law actually required a consecutive sentence, the defendant benefitted from the bargained-for illegal sentence. In such cases, relief under this rule is not available.

Tenn. R. Crim. P. 36.1, Advisory Comm'n Cmts.

Defendant clearly benefitted from concurrent sentencing, “the illegal aspect” of his sentences. Accordingly, Defendant’s motion would be denied even if his sentences were not expired.

Based on the foregoing authorities and reasoning, we affirm the denial of Defendant’s Rule 36.1 motion to correct an illegal sentence.

TIMOTHY L. EASTER, JUDGE