

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE  
Assigned on Briefs May 9, 2023

**FILED**  
05/25/2023  
Clerk of the  
Appellate Courts

**STATE OF TENNESSEE v. STEVEN CRAIG GRIFFIN**

**Appeal from the Criminal Court for Davidson County**  
**No. 93-C-1154 Steve R. Dozier, Judge**

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**No. M2022-01443-CCA-R3-CD**

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Steven Craig Griffin, Petitioner, claims the trial court erred by summarily dismissing his petition for writ of habeas corpus and/or Rule 36.1 motion to correct an illegal sentence. Discerning no error we affirm.

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

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

Steven Craig Griffin, Whiteville, Tennessee, Pro Se.

Jonathan Skrmetti, Attorney General and Reporter; Mary Elizabeth King, Assistant Attorney General; Glenn R. Funk, District Attorney General; and J. Wesley King, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

**Procedural History**

***Jury Trial and Sentence***

Petitioner was convicted by a jury in 1993 of aggravated kidnapping and six counts of aggravated rape. The trial court sentenced Petitioner to ten years for aggravated kidnapping, forty years each for three of the counts of aggravated rape to be served concurrently with each other, and thirty-five years each for three other counts of aggravated rape to be served concurrently with each other. The court ordered the ten-year sentence, the effective forty-year sentence, and the effective thirty-five-year sentence to be served consecutively for a total effective sentence of eighty-five years' incarceration as a Range

II, multiple offender. *State v. Steven Craig Griffin*, No. 01C01-9404-CR-00144, 1995 WL 387277, at \*1-2 (Tenn. Crim. App. June 28, 1995), *perm. app. denied* (Tenn. Nov. 6, 1995).

### ***Direct Appeal***

On appeal, Petitioner raised several issues, including as relevant to this proceeding, an issue as to “whether [Petitioner] was sentenced appropriately.” *Id.* at \*1. Petitioner claimed that his effective eighty-five-year sentence was excessive because the trial court improperly applied enhancement factors and that “the imposition of partial consecutive sentences was unjustified.” *Id.* at \*9. In upholding the length of the sentences, this court held that the trial court properly applied three enhancement factors: that Petitioner had previous history of criminal convictions or criminal behavior, that Petitioner treated the victim with exceptional cruelty, and that the offense was committed to gratify Petitioner’s desire for pleasure or excitement. *Id.* at \*10. This court agreed with the trial court’s finding that Petitioner “was a dangerous offender whose behavior indicated little or no regard for human life and who had no hesitation about committing a crime in which the risk to human life was high” and held that the trial court did not err in ordering that Petitioner serve some of his sentences consecutively. *Id.* at \*12-13. This court affirmed Petitioner’s convictions and sentence on direct appeal. *Id.*

### ***Post-Conviction Relief***

Following the issuance of the opinion in his direct appeal, Petitioner sought post-conviction relief claiming that he received ineffective assistance of counsel. The petition included a claim that trial counsel was ineffective for failing to obtain DNA testing. The post-conviction court dismissed the petition, and this court affirmed the post-conviction court’s judgment. *Steven Craig Griffin v. State*, No. 01C01-9801-CR-0004, 1999 WL 275168, at \*1 (Tenn. Crim. App. May 6, 1999), *perm. app. denied* (Tenn. Oct. 4, 1999).

Petitioner next filed a petition pursuant to the Post-Conviction DNA Analysis Act of 2001 requesting that all physical evidence in the State’s possession be submitted for DNA analysis. The petition was summarily dismissed by the post-conviction court. This court affirmed the dismissal in a two-to-one opinion. In the dissenting opinion, Judge Joseph M. Tipton concluded that the post-conviction court treated Petitioner’s request as a petition to reopen and did not assess the criteria of the Post-Conviction DNA Analysis Act. Judge Tipton opined that the case should have been remanded for the trial court to consider Petitioner’s request under the Post-Conviction DNA Analysis Act. Our supreme court agreed with the dissent and reversed and remanded the case for an evidentiary hearing. *Steven Griffin v. State*, No. M2003-00557-CCA-R3-PC, 2004 WL 1562390, at \*1-2 (Tenn. Crim. App. July 13, 2004), *rev’d by Griffin v. State*, 182 S.W.3d 795 (Tenn. 2006). On remand, the post-conviction court ordered that evidence associated with Petitioner’s

convictions be subjected to DNA analysis. Following a hearing, the post-conviction court found that the results of the DNA analysis were not favorable to Petitioner and dismissed the petition. This court affirmed the dismissal of the petition. *Steven Craig Griffin v. State*, No. M2008-00242-CCA-R3-PC, 2009 WL 564228, at \*9 (Tenn. Crim. App. Mar. 5, 2009), *perm. app. denied* (Tenn. June 15, 2009).

### ***Habeas Corpus and Rule 36.1***

On September 6, 2022, Petitioner, *pro se*, filed a “Petition for Writ of Habeas Corpus and/or Motion to Correct Illegal Sentence Under Rule 36.1 of the Rules of Criminal Procedure” (“the Petition”). Petitioner claimed that because the trial court misapplied the statutory factors, the imposition of consecutive sentences was illegal, excessive, and in direct contravention of Tennessee Code Annotated section 40-35-115.

The trial court entered a written order on September 26, 2022, finding that the Petition failed to state a colorable Rule 36.1 claim and that it did not have jurisdiction to consider the habeas corpus petition because Petitioner failed to provide a sufficient reason for not filing the Petition in the closest court to where Petitioner was being housed. The court summarily dismissed the Petition.

Petitioner timely appeals.

### **Analysis**

On appeal, Petitioner claims that the trial court erred in summarily dismissing the Petition. Petitioner argues that Rule 36.1 permits Petitioner “to seek correction of an illegal sentence” and that his consecutive sentences are illegal because they directly contravene Tennessee Code Annotated section 40-35-115. Petitioner states that he included the writ of habeas corpus claim because that was the only way to seek review of his expired ten-year sentence. The State argues that Petitioner’s challenge to his consecutive sentences was previously determined and that the trial court properly dismissed the Petition. We agree with the State.

Whether a Rule 36.1 motion states a colorable claim for correction of an illegal sentence is a question of law. *State v. Wooden*, 478 S.W.3d 585, 589 (Tenn. 2015). Likewise, whether to grant relief upon review of a petition for habeas corpus is a question of law. *Davis v. State*, 313 S.W.3d 751, 755 (Tenn. 2010). Our review is therefore *de novo* with no presumption of correctness given to the conclusions of the trial court. *Id.*

Rule 36.1(a)(1) provides, in part, that “[e]ither the defendant or the state may seek to correct an illegal sentence by filing a motion to correct an illegal sentence in the trial

court in which the judgment of conviction was entered.” For purposes of Rule 36.1, “an 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)(2).

A Rule 36.1 motion must state a colorable claim for relief before a defendant is entitled to a hearing and appointment of counsel. Tenn. R. Crim. P. 36.1(b)(2); *see Marcus Deangelo Lee v. State*, No W2013-01088-CCA-R3-CO, 2014 WL 902450, at \*6 (Tenn. Crim. App. Mar. 7, 2014). “[F]or purposes of Rule 36.1 . . . a ‘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.

Here, Petitioner’s sentences of ten years for aggravated kidnapping, and forty years and thirty-five years for aggravated rape were authorized by statute and did not contravene any other applicable statute. At the time of the offenses (and currently), aggravated kidnapping was a Class B felony and aggravated rape was a Class A felony. *See* Tenn. Code Ann. §§ 39-13-304(b)(1), 39-13-502(b). At the time of the offenses (and currently), the Range II sentence for a Class B felony was “not less than twelve (12) nor more than twenty (20) years[,]” and the Range II sentence for a Class A felony was “not less than twenty-five (25) nor more than forty (40) years.” *See* Tenn. Code Ann. §§ 40-35-112(b)(2), 40-35-112(b)(1). In Petitioner’s direct appeal, this court determined that the record adequately supported the trial court’s use of enhancement factor 1—Petitioner’s previous history of criminal convictions or criminal behavior—to enhance Petitioner’s sentence and to sentence him as a multiple offender. *Steven Craig Griffin*, 1995 WL 387277, at \*10. The sentences imposed by the trial court were authorized by the applicable statutes.

In the direct appeal, this court agreed with the trial court’s finding that Petitioner was a dangerous offender as defined by Tennessee Code Annotated section 40-35-115(4)(1990) and affirmed the consecutive alignment of the sentences.<sup>1</sup> *Id.* at \*12. The “law of the case doctrine . . . generally prohibits reconsideration of issues that have already been decided in a prior appeal of the same case.” *Memphis Pub. Co. v. Tennessee Petroleum Underground Storage Tank Bd.*, 975 S.W.2d 303, 306 (Tenn. 1998). “[U]nder the law of the case doctrine, an appellate court’s decision on an issue of law is binding in later trials and appeals of the same case if the facts on the second trial or appeal are substantially the same as the facts in the first trial or appeal.” *Id.* This court’s determination in the direct appeal that the trial court properly aligned Petitioner’s sentences consecutively is binding in this appeal.

“Rule 36.1 may not be used to relitigate those issues that have been previously determined.” *State v. Ricky Flamingo Brown*, No. M2015-01754-CCA-R3-CD, 2016 WL

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<sup>1</sup> Code section changed to Tennessee Code Annotated section 40-35-115(b)(4) in 2021.

987641, at \*2 (Tenn. Crim. App. Mar. 15, 2016) *perm. app. denied* (Tenn. Aug. 18, 2016). The same is true for habeas corpus proceedings. Habeas corpus cannot be used to relitigate issues that have been previously determined. *Myers v. State*, 462 S.W.2d 265, 269 (Tenn. Crim. App. 1970); *Alan Ray Hall v. Howard Carlton, Warden*, No. E2012-00430-CCA-R3-HC, 2012 WL 2877622, at \*3 (Tenn. Crim. App. July 16, 2012), *perm. app denied* (Tenn. Nov. 20, 2012).

### **Conclusion**

The judgment of the trial court summarily dismissing the Petition is affirmed.

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ROBERT L. HOLLOWAY, JR., JUDGE