

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

FILED
04/26/2023
Clerk of the
Appellate Courts

CHRISTOPHER M. BLACK v. STATE OF TENNESSEE

**Appeal from the Circuit Court for Trousdale County
No. 2022-CV-4984 Michael Collins, Judge**

No. M2022-01274-CCA-R3-HC

The Appellant, Christopher M. Black, appeals the trial court’s summary dismissal of his petition for habeas corpus relief. The State has filed a motion asking this Court to affirm pursuant to Court of Criminal Appeals Rule 20. Said motion is hereby granted.

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

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

Christopher M. Black, *Pro se*.

Jonathan Skrmetti, Attorney General and Reporter; Benjamin A. Ball, Senior Assistant Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

In 2007, the Appellant was convicted of two counts of aggravated rape and two counts of aggravated robbery and he received an effective fifty-year sentence. *State v. Christopher M. Black*, No. M2010-02176-CCA-R3-CD, 2011 WL 7562957 (Tenn. Crim. App. Dec. 13, 2011), *perm. app. denied* (Tenn. May 16, 2012). After his convictions and sentences were affirmed on appeal, the Appellant was unsuccessful in his subsequent pursuit of post-conviction relief. *Christopher M. Black v. State*, No. M2014-01607-CCA-R3-PC, 2015 WL 9487735 (Tenn. Crim. App. Dec. 29, 2015). In May 2022, the Appellant filed a habeas corpus petition challenging, in essence, the prosecutor’s election of offenses at the conclusion of the proof presented at trial. The habeas corpus court denied relief because the judgments of conviction are not void on their face and because the Appellant failed to state this was actually his second petition seeking habeas corpus relief.

Initially, the Court notes the determination of whether to grant habeas corpus relief is a question of law. *Summers v. State*, 212 S.W.3d 251, 255 (Tenn. 2007). As such, this Court reviews a trial court's findings *de novo* without a presumption of correctness. *Id.* Article I, section 15 of the Tennessee Constitution guarantees an accused the right to seek habeas corpus relief. *See Taylor v. State*, 995 S.W.2d 78, 83 (Tenn. 1999). However, “[s]uch relief is available only when it appears from the face of the judgment or the record of the proceedings that a trial court was without jurisdiction to sentence a defendant or that a defendant’s sentence of imprisonment or other restraint has expired.” *Wyatt*, 24 S.W.3d at 322; *see also* Tenn. Code Ann. § 29-21-101. In other words, habeas corpus relief may be sought only when the judgment is void, not merely voidable. *Taylor*, 995 S.W.2d at 83. “A void judgment ‘is one in which the judgment is facially invalid because the court lacked jurisdiction or authority to render the judgment or because the defendant’s sentence has expired.’ We have recognized that a sentence imposed in direct contravention of a statute, for example, is void and illegal.” *Stephenson v. Carlton*, 28 S.W.3d 910, 911 (Tenn. 2000) (quoting *Taylor*, 995 S.W.2d at 83). Moreover, “the procedural provisions of the habeas corpus statutes are mandatory and must be followed scrupulously.” *Archer v. State*, 851 S.W.2d 157, 165 (Tenn. 1993). Specifically, as it relates to the case at hand, Tennessee Code Annotated section 29-21-107(b)(4) mandates a petitioner shall state “it is [the] first application for the writ, or, if a previous application has been made, a copy of the petition and proceedings thereon shall be produced or satisfactory reasons be given for the failure so to do.”

In this case, the Appellant failed to state this was his second petition and he failed to attach to his petition copies of the documents related to his first petition. On appeal, he does not address the habeas corpus court’s finding that this was his second petition. Regardless of this procedural deficiency, the underlying claim raised by the Appellant is not actionable in a habeas corpus proceeding. *See Patrick Thurmond v. State*, No. E2007-00112-CCA-R3-HC, 2007 WL 4335479 (Tenn. Crim. App. Dec. 12, 2007) (challenge to state’s election of offenses would render convictions voidable, not void). The Appellant also cursorily alleges a claim of ineffective assistance of counsel for the first time on appeal. Issues raised for the first time on appeal are considered waived, however. *State v. Johnson*, 970 S.W.2d 500, 508 (Tenn. Crim. App. 1996). Moreover, despite already having challenged counsel’s representation in a prior post-conviction petition, such a claim is not otherwise cognizable in habeas corpus proceedings. *Ronald L. Allen v. State*, No. W2014-00041-CCA-R3-HC, 2014 WL 2993861 (Tenn. Crim. App. June 30, 2014). The Appellant is not entitled to relief.

Accordingly, for these reasons, the order of the habeas corpus court is affirmed in accordance with Court of Criminal Appeals Rule 20.

Judge Jill Bartee Ayers