

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT JACKSON

Assigned on Briefs November 3, 2015

**STATE OF TENNESSEE v. CHALMERS G. BROWN**

**Appeal from the Criminal Court for Shelby County**  
**Nos. 91-10748, 91-10755, 92-00939 W. Mark Ward, Judge**

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**No. W2015-00782-CCA-R3-CD - Filed January 28, 2016**

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The defendant, Chalmers G. Brown, appeals the trial court's order granting his motion to correct an illegal sentence and entering corrected judgments, arguing that his convictions should have been vacated not merely corrected. After review, we reverse the trial court's correction of the judgments against the defendant and reinstate the original judgments.

**Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court Reversed;  
Original Judgments Reinstated**

ALAN E. GLENN, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and TIMOTHY L. EASTER, JJ., joined.

Stephen Bush, District Public Defender; Phyllis Aluko (on appeal) and Trent Hall (at hearing), Assistant Public Defenders, for the appellant, Chalmers G. Brown.

Herbert H. Slatery III, Attorney General and Reporter; David H. Findley, Senior Counsel; Amy P. Weirich, District Attorney General; and Greg Gilbert, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

In 1992, the defendant entered guilty pleas to seven counts of aggravated burglary, one count of attempted burglary, and one count of theft over \$1000. In exchange for his pleas, he received a ten-year sentence on each of his aggravated burglary convictions and two years on each of the other convictions, to be served concurrently for an effective ten-year sentence.

On May 30, 2014, the defendant, who is now a federal prisoner, filed a motion to correct an illegal sentence pursuant to Tennessee Rule of Criminal Procedure 36.1, asking that his sentences be vacated because the concurrent sentences imposed under the plea

agreement were illegal. The trial court held two hearings on the defendant's motion to correct an illegal sentence. It was undisputed that the defendant's two-year sentence for theft could not run concurrently with his ten-year sentences for aggravated burglary because he was released on bail for the burglaries when he committed the theft.

At the first hearing, on January 9, 2015, the trial court questioned the defendant as to whether he understood that, if the court set aside his convictions, his case would be set for trial and the court could impose consecutive sentencing because he was a multiple offender. The defendant, nevertheless, asserted that he had "served the time for the sentence" but claimed that he was "suffering collateral consequences" in the federal system because of the convictions. He believed that his federal time would be reduced to the statutory minimum if the court corrected his illegal sentences by setting aside his convictions. However, he acknowledged that if he was resentenced on the burglaries and given twenty-five years, it would defeat the purpose of his plan. The defendant asserted that concurrent sentencing was a material component of the plea agreement.

When asked again whether he understood that correcting his illegal sentences did not mean that his indictments would disappear, the defendant said, "I understand it now." He elaborated that, prior to it being made clear to him at the hearing, he had thought he could re-plead to one or two of the charges if the original plea agreement was set aside. The defendant admitted that he would not have asked the court to withdraw his guilty plea had he hypothetically discovered that the sentences were illegal the day after he had entered the plea. At the conclusion of the hearing, the court found that some of the concurrent sentences were illegal and that the concurrent nature of the sentences was a material component of the plea agreement. However, the court denied the motion, deeming the issue moot as the sentences had already been served. The court asked the attorneys to draft an order memorializing the order and reset the case to another day for entry of the requested order.

At the second hearing, on January 14, 2015, the defendant's counsel informed the court that, at the defendant's request, he had prepared corrected judgments. The court questioned the defendant, who stated that he had decided that he did not want to have his convictions set aside but only wanted his judgments corrected. The defendant told the court that he would have still pled guilty had the theft charge been run consecutively to the other charges because "[i]t really wouldn't have made a big . . . difference at that time because . . . [the aggravated burglary and attempted burglary convictions] was ran concurrent legal anyway."

The trial court ultimately entered a partially handwritten order, in which it found that concurrent sentencing was not a material condition of the plea agreement and noted that the defendant did not seek to vacate the sentences, but to merely correct them. The

court retracted its previous finding that the issue was moot. Amended judgment sheets were submitted to show that the sentences in the aggravated burglary and attempted burglary convictions would still be served concurrently with each other, but now be served consecutively with the sentence for theft over \$1000. The date of conviction for the offenses was not changed.

On appeal, the defendant argues that the trial court erred in only correcting his judgments and not vacating them after granting his motion for correction of judgment under Tennessee Rule of Criminal Procedure 36.1. He asserts that the failure to vacate the convictions “negated any possibility that [his] prior criminal history would be reduced for his subsequent federal offenses.” He believed that “seeking a correction of the illegal sentence [would] . . . neutralize those nine convictions from being counted as prior convictions in federal court” because “changing the judgment forms as to the manner of service of his sentences would effectively alter the conviction date for all of the offenses.”

Tennessee Rule of Criminal Procedure 36.1(a) provides:

(a) Either the defendant or the state may, at any time, seek the correction of 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 this rule, an illegal sentence is one that is not authorized by the applicable statutes or that directly contravenes an applicable statute.

In this case, the defendant clearly received an illegal sentence as “a sentence ordered to be served concurrently where statutorily required to be served consecutively” is an illegal sentence. Davis v. State, 313 S.W.3d 751, 759 (Tenn. 2010). However, our supreme court has recently analyzed Rule 36.1 and concluded that Rule 36.1 “does not authorize the correction of expired illegal sentences.” State v. Adrian R. Brown, \_\_ S.W.3d \_\_, No. E2014-00673-SC-R11-CD, 2015 WL 7748275, at \*8 (Tenn. Dec. 2, 2015). Here, the defendant readily admits that his sentence has long since expired and, because of such, relief is not available under Rule 36.1. Therefore, we reverse the trial court’s correction of the judgments against the defendant and reinstate the original judgments.

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ALAN E. GLENN, JUDGE