

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs April 8, 2020

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Appellate Courts

STATE OF TENNESSEE v. ASHLEY CARVER

Appeal from the Criminal Court for Shelby County
No. 12-04774 Jennifer Johnson Mitchell, Judge

No. W2019-01727-CCA-R3-CD

Ashley Carver, Movant, appeals from the summary dismissal of her Tennessee Rule of Criminal Procedure 36 motion to correct what she claims is a clerical error concerning pretrial jail credits. In a one sentence order, the trial court summarily dismissed the “Motion to Correct Illegal Sentence” without making any findings. Because this was a Rule 36 motion to correct an alleged clerical error, not a Tennessee Rule of Criminal Procedure 36.1 motion to correct an illegal sentence, we vacate the order dismissing the motion and remand for further consideration by the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Vacated
and Case Remanded**

ROBERT L. HOLLOWAY, JR., J., delivered the opinion of the court, in which CAMILLE R. MCMULLEN and ROBERT H. MONTGOMERY, JR., JJ., joined.

Ashley Carver, Henning, Tennessee, Pro Se.

Herbert H. Slatery III, Attorney General and Reporter; Brent C. Cherry, Senior Assistant Attorney General; and Amy P. Weirich, District Attorney General; for the appellee, State of Tennessee.

OPINION

Procedural History

We have been able to ascertain from the scant record on appeal the following procedural history of this case. On September 6, 2012, the Shelby County Grand Jury issued a six-count indictment in Case No. 12-04774 charging Movant with two counts of first degree felony murder, one count of first degree premeditated murder, two counts of

especially aggravated robbery, and one count of especially aggravated kidnapping. The indictment was in connection with the kidnapping, robbery, and murder of Leonard Davison on January 20, 2012.

On June 10, 2015, Movant filed a “Petition for Waiver of Trial by Jury and Request for Acceptance of Plea of Guilty” (“the Plea Agreement”) in Case Nos. 12-04774 and 12-04775. The Plea Agreement provided that Movant would plead guilty to two counts of second degree murder, two counts of especially aggravated robbery, and one count of especially aggravated kidnapping in exchange for concurrent sentences of thirty-two years’ incarceration with release eligibility after service of 100% of the sentence on each of the five offenses. A June 10, 2015 “Order on Guilty Plea” in Case Nos. 12-04774 and 12-04775 provided that the trial court “granted” the Plea Agreement.

The record on appeal only includes judgments of conviction for Case No. 12-04774. These judgments show that Movant was convicted in Count 1 of second degree murder, in Count 4 of especially aggravated robbery, and in Count 5 of especially aggravated kidnapping and sentenced to concurrent terms of thirty-two years’ incarceration on each offense with release eligibility after service of 100% of the sentence. *Each of these three judgments of conviction provide pretrial jail credit from September 18, 2012, through June 10, 2015.* The record does not include any indictments or judgments for Case Number 12-04775, nor does the record include a transcript of a guilty plea hearing or sentencing hearing in Case Nos. 12-04774 or 12-04775.

On February 29 [sic], 2019, Movant filed a pro se Tennessee Rule of Criminal Procedure 36 motion to correct a clerical error in Case No. 12-04774, concerning pretrial jail credits in Counts 1, 4, and 5. Movant claimed that she was “in the custody of the Shelby County Jail” from February 18, 2012, until June 10, 2015, “for a period of continuous confinement of 1208 days.” On September 10, 2019, the trial court summarily dismissed the “Motion to Correct Illegal Sentence” without any findings. Movant timely filed her notice of appeal.

Analysis

On appeal Movant claims that the trial court erred in dismissing her Rule 36 motion. The State claims that “the record is inadequate for this [c]ourt to review the issue raised by [Movant].” We agree with Movant.

Tennessee Rule of Criminal Procedure 36 governs clerical mistakes and provides:

After giving any notice it considers appropriate, the court may at any time correct clerical mistakes in judgments, orders, or other parts of the record, and errors in the record arising from oversight or omission. Upon filing of the corrected judgment or order, or upon the court's denial of a motion filed pursuant to this rule, the defendant or the state may initiate an appeal as of right pursuant to Rule 3, Tennessee Rules of Appellate Procedure.

“Clerical errors ‘arise simply from a clerical mistake in filling out the uniform judgment document’ and may be corrected at any time under Tennessee Rule of Criminal Procedure 36.” *State v. Wooden*, 478 S.W.3d 585, 595 (Tenn. 2015), quoting *Cantrell v. Easterling*, 346 S.W.3d 445, 449 (Tenn. 2011). Failure to award pretrial jail credits is a clerical error. *State v. Brown*, 479 S.W.3d 200, 213 (Tenn. 2015). A clerical error does not render the sentence illegal. *Id.*

Following the sentencing of a defendant, Tennessee Code Annotated section 40-35-209(e)(1) requires the district attorney general to “complete and file within thirty (30) days the uniform judgment document for the conviction.” The judgment must either be “signed by all parties,” or if not signed, “the clerk shall make a copy of the document available to the parties before entry by the court[.]” Tenn. Code Ann. § 40-35-209(e)(1) (2019). One of the items that the judgment must provide is “[t]he amount, if any, of pretrial jail credit awarded pursuant to § 40-23-101[.]” Tenn. Code Ann. § 40-35-209(e)(1)(P) (2019).

Tennessee Code Annotated section 40-23-101(a) provides that: “the judgment of the court shall be rendered so that the sentence shall commence on the day on which the defendant legally comes into the custody of the sheriff for execution of the judgment of imprisonment.” Concerning pretrial jail credit, section 40-23-101(c) requires trial courts to enter judgments that “allow the defendant credit on the sentence for any period of time for which the defendant was committed and held in the city jail or juvenile court detention prior to waiver of juvenile court jurisdiction, or county jail or workhouse, pending arraignment and trial.” Tenn. Code Ann. § 40-23-101(c) (2019).

Upon the filing of a Rule 36 motion seeking pretrial jail credits, trial courts typically request that the district attorney general, as the party responsible for preparing judgments of conviction pursuant to section 40-23-101(a), research the dates a movant was incarcerated before sentencing. The court is not required to hold a hearing, but the information received from the district attorney general or other reliable source should be used to either provide the correct pretrial jail credit or to dismiss the motion. The information provided to the trial court should either be incorporated as a finding or attached to the order disposing of the Rule 36 motion, and the order should contain a certificate of service to the movant.

Movant sought to correct clerical errors in Case No. 12-04774, Counts 1, 4, and 5. The judgments, which were signed by Movant, provided pretrial jail credit from September 18, 2012, through June 10, 2015. However, the plea agreement and the order granting the plea agreement specifically reference two cases, Case Nos. 12-04774 and 12-04775. Case No. 12-04774 involved the kidnapping, robbery, and murder of Leonard Davison. Apparently, there was a second victim robbed and murdered by Movant that was the basis for Case No. 12-04775. The thirty-two-year sentences in the three counts of Case No. 12-04774 and the two counts of Case No. 12-04775 were ordered to be served concurrently. As such, Movant would be entitled to pretrial jail credit in Case Nos. 12-04775 if Movant was incarcerated on that offense before September 18, 2012, the starting date listed in the judgment for Case No. 12-04774 for pretrial jail credit.

Conclusion

The trial court erred in summarily dismissing the Rule 36 motion as a “Motion to Correct Illegal Sentence.” The order dismissing the Rule 36 motion is vacated, and this matter is remanded to the trial court for review in accordance with Rule 36 and for entry of corrected judgments, if a clerical error exists, or for entry of an order dismissing the motion if there is no clerical error.

ROBERT L. HOLLOWAY, JR., JUDGE