

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT JACKSON

Assigned on Briefs March 13, 2018

FILED

04/27/2018

Clerk of the  
Appellate Courts

**STATE OF TENNESSEE v. DONALD CLARK**

**Appeal from the Criminal Court for Shelby County**

**Nos. 00-03417, 00-03419, 00-03420, 00-03421, 00-03422, 00-12075, 99-09417**

**Lee V. Coffee, Judge**

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**No. W2017-01901-CCA-R3-CD**

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Over eighteen years ago, Defendant, Donald Clark, shot and robbed a man in Shelby County. After conviction, he received a 27-year sentence, as a violent offender. He now appeals the trial court's dismissal of his motion to correct an illegal sentence filed pursuant to Tennessee Rule of Criminal Procedure 36.1. After careful consideration, we affirm the judgment of the trial court.

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

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

Donald Clark, Memphis, Tennessee, Pro Se.

Herbert H. Slatery III, Attorney General and Reporter; Zachary T. Hinkle, Assistant Attorney General; Amy P. Weirich, District Attorney General; and Alanda H. Dwyer, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

Defendant has sought this Court's review numerous times. First, he sought relief on direct appeal in *State v. Donald Clark*, No. W2001-01549-CCA-R3-CD, 2003 WL 21339272, at \*1 (Tenn. Crim. App. May 15, 2003), *perm. app. denied* (Tenn. Oct. 27, 2003). Next, he sought post-conviction relief in *Donald Clark v. State*, No. W2006-00642-CCA-R3-PC, 2007 WL 1215024, at \*1 (Tenn. Crim. App. Apr. 25, 2007), *perm. app. denied* (Tenn. Aug. 20, 2007). Then, he sought habeas corpus relief, twice, in *Donald Clark v. State*, No. M2009-02088-CCA-R3-HC, 2010 WL 2432083, at \*1 (Tenn.

Crim. App. Jun. 17, 2010), *perm. app. dismissed* (Tenn. Aug. 25, 2010), *mot. to reconsider denied*, (Tenn. Sept. 7, 2010), and *Donald Clark v. State*, No. M2012-01532-CCA-R3-HC, 2012 WL 6212697, at \*1 (Tenn. Crim. App. Dec. 12, 2012), *no perm. app. filed*. Every time, this Court affirmed the decision of the lower court. Additionally, with respect to the current appeal, the trial court noted in its order that Defendant had previously filed a Rule 36.1 motion making similar claims on October 2, 2015, and the trial court dismissed that motion in November of 2015.<sup>1</sup>

Defendant again claimed that his sentences are illegal and filed a second motion to correct an illegal sentence under Tennessee Rule of Criminal Procedure 36.1 on June 16, 2017. Defendant argues that his sentences are illegal because he wrongfully received concurrent sentences instead of consecutive sentences, the Tennessee Department of Correction (“TDOC”) TOMIS report states the wrong sentence length, TDOC failed to properly allocate his pre-trial jail credit, and the evidence was insufficient to support his conviction. The trial court dismissed Defendant’s motion without a hearing in an order filed on August 21, 2017.

After the amendments which took effect on July 1, 2016, Rule 36.1 lists four procedural requirements for defendants filing motions to correct an illegal sentence. Tenn. R. Crim. P. 36.1(a)(1). First, the motion must be filed “in the trial court in which the judgment of conviction was entered.” *Id.* Second, the motion “must be filed before the sentence set forth in the judgment order expires.” *Id.* Next, “the movant must attach to the motion a copy of each judgment order at issue and may attach other relevant documents.” *Id.* Finally, the motion must “state that it is the first motion for the correction of the illegal sentence,” or include “a copy of each previous motion and the court’s disposition thereof or state satisfactory reasons for failure to do so.” *Id.*

Defendant failed to attach any of the judgments for his convictions to his Rule 36.1 motion. In the appellate record, there is a completely random page, unassociated with any filing by Defendant, which contains only one sentence in large font stating, “This is the petitioner first 36.1 motion in the Criminal court.” However, this statement is in direct contradiction to the trial court’s finding that Petitioner had previously filed a Rule 36.1 motion. Defendant failed to attach a copy of his previous Rule 36.1 motion and the court’s order disposing of that motion, and Defendant did not provide any reasons for his failure to do so. In so doing, Defendant failed to comply with the procedural requirements of Rule 36.1, and he failed to provide this Court with an adequate record to review on appeal. This prevents us from considering the merits of Defendant’s motion.

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<sup>1</sup> Neither Defendant’s first motion under Rule 36.1 nor the trial court’s order dismissing this motion was included in the record on this appeal.

While Defendant included the judgments for his convictions as an exhibit to his appellate brief, this Court has refused to recognize attachments to briefs as part of the appellate record. *See State v. Carlos Richard Morris*, No. W2017-00129-CCA-R3-CD, 2017 WL 3836024, at \*2 (Tenn. Crim. App. Aug. 31, 2017) (citing *LaBryant King v. State*, No. M2004-01371-CCA-R3-PC, 2005 WL 1307802, at \*3 n.3 (Tenn. Crim. App. June 1, 2005), *perm. app. denied* (Tenn. Dec. 19, 2005)), *no perm. app. filed*. “This [C]ourt is precluded from considering an issue when the record is incomplete and does not contain the proceedings and documents relevant to the issue.” *Morris*, 2017 WL 3836024, at \*2 (citing *State v. Bennett*, 798 S.W.2d 783, 789 (Tenn. Crim. App. 1990)). Previously, we have held that when a Defendant’s argument in a Rule 36.1 motion turned on “whether he was on bail when he committed subsequent offenses, whether his sentences have expired, and whether he was awarded pretrial jail credits” judgments of conviction were required to be part of the appellate record. *Morris*, 2017 WL 3836024, at \*2. We also apply that reasoning in this case. Accordingly, we cannot determine whether Defendant has stated a colorable claim, and we conclude that the trial court properly dismissed Defendant’s Rule 36.1 motion.

#### *Conclusion*

For the aforementioned reasons, we affirm the judgment of the trial court.

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TIMOTHY L. EASTER, JUDGE