

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs August 25, 2021

FILED

08/26/2021

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. DAVID YOST, JR.

**Appeal from the Criminal Court for Knox County
No. 105590 Steven W. Sword, Judge**

No. E2020-01115-CCA-R3-CD

The pro se petitioner, David Yost, Jr., appeals the Knox County Criminal Court's summary dismissal of his motion to correct an illegal sentence, filed pursuant to Tennessee Rule of Criminal Procedure 36.1. Discerning no error, we affirm.

Tenn. R. App. P. 3; Judgment of the Criminal Court Affirmed

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which ROBERT H. MONTGOMERY, JR., and JILL BARTEE AYERS, JJ., joined.

David Yost, Jr., Whiteville, Tennessee, pro se.

Herbert H. Slatery III, Attorney General and Reporter; Renee W. Turner, Assistant Attorney General; and Charme P. Allen, District Attorney General, for the appellee, State of Tennessee.

OPINION

In January 2016, the petitioner pleaded guilty to one count of possession of .5 grams or more of cocaine with intent to sell and one count of domestic assault. Pursuant to the plea agreement, the trial court sentenced the defendant to an effective eight-year sentence to be served on supervised probation consecutively to a sentence in Blount County. On May 24, 2017, the trial court revoked the petitioner's probation and ordered him to serve the balance of his sentence in confinement.¹

On June 24, 2020, the petitioner moved to correct what he believes to be an illegal sentence under Tennessee Rule of Criminal Procedure 36.1, arguing that his

¹ The trial court's order denying the petitioner's Rule 36.1 motion states that the petitioner did not appeal the revocation order, and nothing in the record indicates otherwise.

sentence is illegal because the trial court's revocation order violated the plea agreement. The trial court summarily dismissed the petitioner's motion, concluding that it failed to state a colorable claim for relief under Rule 36.1.

In this timely appeal, the petitioner challenges the trial court's summary dismissal of his motion, arguing that his sentence is illegal because the trial court erred by revoking his probation and ordering him to serve the balance of his sentence in confinement.

Rule 36.1 provides the defendant and the State an avenue to "seek to correct an illegal sentence," defined as a sentence "that is not authorized by the applicable statutes or that directly contravenes an applicable statute." Tenn. R. Crim. P. 36.1; *see also State v. Wooden*, 478 S.W.3d 585, 594-95 (Tenn. 2015) (holding that "the definition of 'illegal sentence' in Rule 36.1 is coextensive with, and not broader than, the definition of the term in the habeas corpus context"). To avoid summary denial of an illegal sentence claim brought under Rule 36.1, a defendant must "state with particularity the factual allegations," *Wooden*, 478 S.W.3d at 594, establishing "a colorable claim that the unexpired sentence is illegal," Tenn. R. Crim. P. 36.1(b)(3). "[F]or purposes of Rule 36.1 . . . '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. The determination whether a Rule 36.1 "motion states a colorable claim for correction of an illegal sentence under Rule 36.1 is a question of law, to which de novo review applies." *Id.* at 589 (citing *Summers v. State*, 212 S.W.3d 251, 255 (Tenn. 2007)).

Here, even considering all of the petitioner's allegations to be true, Rule 36.1 does not afford him relief. An error in a trial court's revocation of probation is an appealable error and does not render a sentence illegal. *See State v. Pearce*, No. W2019-00341-CCA-R3-CD, 2019 WL 5681477, at *2 (Tenn. Crim. App., Jackson, Oct. 31, 2019) (stating that an attack on a probation revocation order "is a claim of trial court error that could have been appealed") (citing T.C.A. § 40-35-311(e)(3); Tenn. R. App. P. 3(b)); *see also Wooden*, 478 S.W.3d at 595 ("Sentencing errors fall into three categories—clerical errors, appealable errors, and fatal errors. Only fatal errors render sentences illegal." (citations omitted)). Consequently, alleged error in the trial court's probation revocation order is not a claim that can be raised via Rule 36.1. Because the petitioner's eight-year sentence imposed for a Class B felony for a Range I offender is authorized by statute, it is not an illegal sentence for the purposes of Rule 36.1.

Accordingly, we discern no error in the trial court's summary dismissal of the petitioner's motion, and we affirm the judgment of the trial court.

JAMES CURWOOD WITT, JR., JUDGE