

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs at Knoxville November 16, 2016

DOUGLAS MARSHALL MATHIS v. BRUCE WESTBROOKS, WARDEN

Appeal from the Circuit Court for Davidson County
No. 16-C-1356 Amanda J. McClendon, Judge

No. M2016-01348-CCA-R3-HC

Petitioner, Douglas Marshall Mathis, appeals the summary dismissal of his third petition for habeas corpus relief. Because Petitioner's claims have been previously litigated and are not cognizable in a habeas corpus proceeding, we affirm the summary dismissal of the petition for habeas corpus relief.

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

TIMOTHY L. EASTER, J., delivered the opinion of the court, in which D. KELLY THOMAS, JR., and ROBERT H. MONTGOMERY, JR., JJ., joined.

Douglas Marshall Mathis, Nashville, Tennessee, Pro Se.

Herbert H. Slatery III, Attorney General and Reporter; Courtney N. Orr, Assistant Attorney General; and Glenn R. Funk, District Attorney General, for the appellee, State of Tennessee.

OPINION

Petitioner shot and killed Selwyn Ward in Houston County nearly eighteen years ago. He pled guilty to second degree murder in May of 2001 and received a fifteen-year sentence. To his lasting regret, Petitioner was then granted post-conviction relief and allowed to withdraw his guilty plea. After a subsequent jury trial, Petitioner was convicted of first degree murder and sentenced to life imprisonment. Petitioner unsuccessfully appealed his conviction to this Court. *State v. Douglas Marshall Mathis*, No. M2002-02291-CCA-R3-CD, 2004 WL 392710, at *1 (Tenn. Crim. App. Mar, 3, 2004), *perm. app. denied* (Tenn. Oct. 11, 2004).

Petitioner then sought post-conviction relief based on ineffective assistance of trial counsel, the denial of a fair and impartial jury, the denial of the right to confront witnesses at trial, and the lack of a valid indictment. The post-conviction court denied relief, and this Court affirmed on appeal. *Douglas Marshall Mathis v. State*, No. M2006-02525-CCA-R3-PC, 2008 WL 1850800, at *1 (Tenn. Crim. App. Apr. 25, 2008), *perm. app. denied* (Tenn. Oct. 27, 2008).

Petitioner then sought habeas corpus relief for the first time. *Douglas Marshall Mathis v. State*, No. M2010-00730-CCA-R3-HC, 2011 WL 300143, at *1 (Tenn. Crim. App. Jan. 19, 2011), *perm. app. denied* (Tenn. May 26, 2011). In that petition, he claimed that his conviction for first degree murder and resulting life sentence were illegal because the post-conviction court responsible for vacating the original guilty plea failed to determine that there was a constitutional violation during the proceedings which led to the guilty plea. In other words, the post-conviction court had no authority to vacate the plea and subject Petitioner to trial. As a result, Petitioner argued that his conviction and sentence for first degree murder were illegal and his guilty plea should be reinstated. *Id.* The habeas corpus court dismissed the petition without a hearing. On appeal this Court affirmed the dismissal of the petition, in part justified by Petitioner's failure to attach the judgment of his conviction or the records of the proceedings during which his guilty plea was set aside. *Id.* at *3.

Petitioner filed a second petition for habeas corpus relief, again insisting that the post-conviction court was without jurisdiction to allow for the withdrawal of the guilty plea and order a trial on the original indictment for first degree murder. *Douglas M. Mathis v. Wayne Carpenter, Warden*, No. M2014-01552-CCA-R3-HC, 2015 WL 4365343, at *1 (Tenn. Crim. App. July 16, 2015), *perm. app. denied* (Tenn. Nov. 24, 2015). The petition was dismissed. This Court affirmed, commenting that Petitioner "simply repackaged the claims of his first such petition, as well as his earlier petition for post-conviction relief" and concluded that the "same complaints, now raised for the third time, are not cognizable in a habeas corpus proceeding." *Id.* at *2.

Continuing to challenge his conviction for first degree murder, Petitioner filed a third petition for habeas corpus relief in May of 2016. In this petition, he claimed that the order granting post-conviction relief and vacating his plea was illegal because he was not represented by counsel and was not permitted to amend his petition. The habeas corpus court again dismissed the petition without a hearing, concluding that Petitioner had filed "yet another attempt to attack the jurisdiction of the trial court in procedural circumstances of [Petitioner's] own making." The habeas corpus court noted that the jurisdiction of the original post-conviction court and the validity of the judgment of conviction had been previously litigated and that there was no evidence that Petitioner's sentence or judgment was void, illegal, or expired.

Analysis

As an initial matter, we must determine whether the notice of appeal was timely filed. The order dismissing the petition was filed on May 31, 2016. Petitioner's notice of appeal was filed in this Court on July 1, 2016, thirty-one days after the filing of the order dismissing the petition for relief. The State argues that Petitioner's notice of appeal was untimely because he "did not request a waiver of the filing deadline and provides no explanation as to why the notice was untimely filed." The State also insists that the interests of justice do not require this Court to waive the timely filing requirement. In a reply brief, Petitioner cites to Tennessee Rule of Appellate Procedure Rule 20(g) to prove that the notice of appeal was timely filed.

An appeal as of right is initiated by filing a notice of appeal within 30 days of the entry of the judgment. Tenn. R. App. P. 3(e) and 4(a). In the case of a pro se petitioner who is incarcerated, "filing shall be timely if the papers were delivered to the appropriate individual at the correctional facility within the time fixed for filing." Tenn. R. App. P. 20(g). In Petitioner's pro se notice of appeal, the certificate of service indicates that it was mailed to the district attorney on June 28, 2016. However, Petitioner did not sign the certificate or service or certify that it was sent to the county clerk via prison mail on the 28th. The notice of appeal is file-stamped July 1, 2016. In our view, the notice of appeal was filed one day late. However, we choose to address Petitioner's claim in the interests of justice.

In Tennessee, "[a]ny person imprisoned or restrained of his liberty, under any pretense whatsoever . . . may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment and restraint." T.C.A. § 29-21-101. While there is no statute of limitations for filing a petition for a writ of habeas corpus, the grounds upon which habeas corpus relief may be granted are narrow. *Hickman v. State*, 153 S.W.3d 16, 20 (Tenn. 2004). Habeas corpus relief is only available when it appears on the face of the judgment or record that the convicting court was without jurisdiction to convict or sentence the defendant, or that the defendant is still imprisoned despite the expiration of his sentence. *Id.*; *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993). In other words, habeas corpus relief may be granted only when the judgment is void, rather than merely voidable. *Summers v. State*, 212 S.W.3d 251, 255 (Tenn. 2007). A void judgment is "one that is facially invalid because the court did not have the statutory authority to render such judgment." *Id.* at 256 (citing *Dykes v. Compton*, 978 S.W.2d 528, 529 (Tenn. 1998)). A voidable judgment is "one that is facially valid and requires proof beyond the face of the record or judgment to establish its invalidity." *Id.* The petitioner bears the burden of showing, by a preponderance of the evidence, that his judgment is void. *Wyatt v. State*, 24 S.W.3d 319, 322 (Tenn. 2000). Because the issue of whether habeas corpus relief should be granted is a question of law, we conduct a de novo review without any

presumption of correctness given to the decision of the lower court. *Summers*, 212 S.W.3d at 255.

Here, Petitioner challenges the jurisdiction of the court that presided over the jury trial after the withdrawal of his guilty plea on the basis that the trial court lost jurisdiction when it granted him post-conviction relief and allowed him to withdraw his guilty plea without the assistance of counsel—an issue he has raised at least twice before. *See Douglas M. Mathis*, 2015 WL 4365343, at *1; *Douglas Marshall Mathis*, 2011 WL 300143, at *1. While Petitioner may have attempted to disguise his argument by altering the wording of his challenge to the trial court’s jurisdiction, the underlying argument remains the same. A habeas petition is not the proper place to relitigate issues that have been previously ruled upon. Under the “law of the case” doctrine, issues which have been previously determined on appeal cannot be reconsidered. *Memphis Publ’g Co. v. Tenn. Petroleum*, 975 S.W.2d 303, 306 (Tenn. 1998). “This rule promotes the finality and efficiency of the judicial process, avoids indefinite relitigation of the same issue, fosters consistent results in the same litigation, and assures the obedience of lower courts to the decisions of appellate courts.” *Id.* (quoting *Ladd v. Honda Motor Co.*, 939 S.W.2d 83, 90 (Tenn. Ct. App. 1996)). This doctrine also applies to issues that were determined necessarily by implication. *Id.*

Moreover, Petitioner’s argument that he was not afforded counsel when he withdrew his guilty plea does not entitle him to habeas relief because it is not the type of issue that would render a judgment void. *See* T.C.A. § 29-21-101; *Faulkner v. State*, 226 S.W.3d 358, 361 (Tenn. 2007). Additionally, nothing on the face of the judgment indicates that the trial court lacked jurisdiction. A trial court can summarily dismiss a petition of habeas corpus without the appointment of a lawyer and without an evidentiary hearing if there is nothing on the face of the judgment to indicate that the conviction addressed therein is void. *See Passarella v. State*, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994); *see also Rodney Buford v. State*, No. M1999-00487-CCA-R3-PC, 2000 WL 1131867, at *2 (Tenn. Crim. App. July 28, 2000), *perm. app. denied* (Tenn. Jan. 16, 2001). Petitioner is not entitled to relief on this issue.

For the foregoing reasons, the dismissal of the petition for habeas corpus relief is affirmed.

TIMOTHY L. EASTER, JUDGE