

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs August 27, 2019

FILED

10/21/2019

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. LOGAN CHOUINARD

Appeal from the Criminal Court for McMinn County
Nos. 14-CR-316, 14-CR-317 Andrew M. Freiberg, Judge

No. E2018-01660-CCA-R3-CD

The defendant, Logan Chouinard, appeals from the McMinn County Criminal Court's denial of his Tennessee Rule of Criminal Procedure 36.1 motion to correct an illegal sentence. Discerning no error, we affirm the judgment of the trial court.

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

J. ROSS DYER, J., delivered the opinion of the court, in which CAMILLE R. MCMULLEN and TIMOTHY L. EASTER, JJ., joined.

Logan Chouinard, Benton, Tennessee, Pro Se.

Herbert H. Slatery III, Attorney General and Reporter; Renee W. Turner, Senior Assistant Attorney General; and Stephen D. Crump, District Attorney General, for the appellee, State of Tennessee.

OPINION

Facts and Procedural History

On September 2, 2014, the defendant entered in open plea in 14-CR-316 to attempted aggravated burglary (count one) and evading arrest (count two). He also entered an open plea in 14-CR-317 to theft over \$10,000 (count one) and evading arrest (count two).¹ In 14-CR-316, the trial court sentenced the defendant to concurrent sentences of two years, which were to be served consecutively to concurrent five year sentences in 14-CR-317. The defendant's effective sentence of seven years was to be served on probation. No appeal was taken from the petitioner's guilty pleas and sentence.

¹ The guilty plea hearing transcript is not included in the appellate record.

On August 4, 2017, the trial court revoked the defendant's probation and ordered him to serve the balance of his sentence in confinement.

On July 19, 2018, the defendant filed a motion to correct an illegal sentence, pursuant to Tennessee Rule of Criminal Procedure 36.1, arguing his sentence in 14-CR-316 is illegal because the two year sentence expired prior to the revocation of the defendant's probation. The defendant also argued his sentence in 14-CR-317 is illegal because he agreed to plead guilty to theft over \$1,000 but was sentenced for theft over \$10,000. The trial court denied the Rule 36.1 motion for failure to state a colorable claim, finding the defendant's claims were "potentially appealable errors," and the defendant simply "challenge[d] the methodology used by the trial court when imposing his sentences." This timely appeal followed.

Analysis

Whether a motion states a colorable claim for correction of an illegal sentence under Rule 36.1 is a question of law calling for de novo review. *State v. Wooden*, 478 S.W.3d 585, 589 (Tenn. 2015) (citing *Summers v. State*, 212 S.W.3d 251, 255 (Tenn. 2007)). Rule 36.1 provides that the petitioner "may seek to correct an illegal sentence by filing a motion to correct an illegal sentence in the trial court in which the judgment of conviction was entered." A sentence is illegal if it is not authorized by the applicable statutes or directly contravenes an applicable statute. Tenn. R. Crim. P. 36.1(a)(2). If the motion states a colorable claim, the trial court shall appoint counsel if the petitioner is indigent and not already represented by counsel and hold a hearing on the motion, unless the parties waive the hearing. Tenn. R. Crim. P. 36.1(b)(3). A "'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 movant must attach to the motion a copy of each judgment order at issue and may attach other relevant documents." Tenn. R. Crim. P. 36.1(a)(1).

"[F]ew sentencing errors render [a sentence] illegal." *Wooden*, 478 S.W.3d at 595. Examples of illegal sentences include "sentences imposed pursuant to an inapplicable statutory scheme, sentences designating release eligibility dates where early release is statutorily prohibited, sentences that are ordered to be served concurrently where statutorily required to be served consecutively, and sentences not authorized by any statute for the offense." *Id.* However, "attacks on the correctness of the methodology by which a trial court imposed [a] sentence" do not rise to the level of an illegal sentence. *Id.*

The judgment form in this case indicates the defendant was convicted of theft over \$10,000, a Class C felony, and received a within-range sentence of five years. *See* Tenn.

Code Ann. § 40-35-112(a)(3). The defendant has failed to show how his sentence violates any statute or renders him eligible for relief under Rule 36.1. He is not entitled to relief.

Furthermore, although the defendant argues his guilty plea was not voluntary, even if his claim was true, the defendant would not be entitled to relief. The defendant asserts he believed he was pleading guilty to theft over \$1,000, and the “Plea of Guilty” signed by the defendant lists the charge as “Theft of Property over \$1,000 - Class C Felony.” However, in denying relief, the trial court found the following:

It is worth repeating that [the defendant] himself agreed to these terms of punishment by voluntary plea on September 2, 2014. The seven year term of punishment was satisfactory to [the defendant] when it was probationary at the time of his plea. Only now does [the defendant] object to his sentence that he has violated his probation and has been ordered to serve the balance of his sentence in the prison system.

...

[E]ven the document of claimed error titled, “Plea of Guilty,” lists his conviction as a “Class C Felony” theft, clearly indicative of a human error on one form by the failed inclusion of an extra zero in the handwritten description of offenses.

Any allegation that the defendant did not knowingly and voluntarily enter his plea should be raised in a petition for post-conviction relief and does not state a colorable claim for relief under Rule 36.1. *State v. LaShonda Moneak Williamson*, No. M2015-01812-CCA-R3-CD, 2016 WL 552745, at *2 (Tenn. Crim. App. Feb. 12, 2016), *no perm. app. filed*. The defendant is not entitled to relief.

The defendant also argues his two-year sentence in 14-CR-316 is illegal because it expired prior to the revocation of his probation. However, the defendant failed to support his assertion with argument, references to the record, or citations to legal authorities. Tenn. R. App. P. 27(a)(7); Tenn. Ct. Crim. App. R. 10 (“Issues which are not supported by argument, citation to authorities, or appropriate references to the record will be treated as waived in this court.”). This issue has been waived.

Finally, the defendant argues he received ineffective assistance of counsel during his guilty plea hearing. However, claims regarding ineffective assistance of counsel are not contemplated under Rule 36.1. Tenn. R. Crim. P. 36.1. The defendant is not entitled to relief.

Conclusion

Based on the foregoing authorities and reasoning, we affirm the judgment of the trial court.

J. ROSS DYER, JUDGE