

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs June 5, 2018

FILED

09/28/2018

Clerk of the
Appellate Courts

GARY ALLEN MCKENNIE v. STATE OF TENNESSEE

Appeal from the Circuit Court for Carroll County
No. 10-CR-22 Donald E. Parish, Judge

No. W2017-01561-CCA-R3-ECN

The Petitioner, Gary Allen McKennie, sought coram nobis relief from his convictions, alleging that his guilty pleas were not knowingly and voluntarily entered; therefore, the convictions were void. The coram nobis court denied the petition, finding that it was not timely and that coram nobis relief was unavailable to a Petitioner who had entered a guilty plea. The Petitioner appeals the coram nobis court's ruling. Upon review, we affirm the judgment of the coram nobis court.

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

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which THOMAS T. WOODALL and ROBERT W. WEDEMEYER, JJ., joined.

Gary Allen McKennie, Terre Haute, Indiana, Pro se.

Herbert H. Slatery III, Attorney General and Reporter; Courtney N. Orr, Assistant Attorney General; Matthew F. Stowe, District Attorney General; and R. Adam Jowers, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

I. Factual Background

On February 16, 2010, the Petitioner pled guilty in the Carroll County Circuit Court to theft in an amount more than \$10,000 but less than \$60,000, filing a false report, and harassment. The Petitioner was sentenced as a Range I, standard offender to concurrent sentences of three years for the theft conviction, two years for the filing a false report conviction, and eleven months and twenty-nine days for the harassment conviction. The Petitioner agreed to serve 120 days in confinement for the theft

conviction, 90 days for the filing a false report conviction, and fifteen days for the harassment conviction, which were also concurrent. The balance of the sentences was to be served on community corrections. The Petitioner agreed to pay the theft victim restitution in the amount of \$10,612.70.

At the guilty plea hearing, the Petitioner repeatedly stated that he wanted to plead guilty; however, he refused to agree to the factual basis recited by the State. When asked by the trial court if he wanted to plead guilty because it was in his best interest, the Petitioner responded affirmatively.

On May 30, 2017, the Petitioner filed a pro se petition for writ of error coram nobis. In the petition, the Petitioner alleged that he was reluctant to plead guilty and that he did so only because he was in ill health and wanted to be released from jail. The Petitioner contended that he never admitted the factual basis for the convictions and defense counsel never explained an Alford¹ or best interest plea; therefore, his guilty pleas were involuntarily and unknowing, and the convictions were void.

The Petitioner acknowledged that his petition was filed seven years after his guilty pleas were entered but contended that he had “good cause for having not filed sooner.” He stated that he was convicted in federal court for being a felon in possession of a firearm, and the federal court used the Carroll County convictions to enhance his sentence. Subsequently, the Petitioner received assistance from “a fellow federal prisoner” and discovered the errors that occurred at the plea hearing.

The coram nobis court denied the petition, finding (1) it was untimely, (2) the Petitioner alleged no just cause for excusing the tardy filing, and (3) the petition failed to state a basis for coram nobis relief. On appeal, the Petitioner challenges the coram nobis court’s rulings.

II. Analysis

The writ of error coram nobis is codified in Tennessee Code Annotated section 40-26-105 and provides as follows:

There is hereby made available to convicted defendants in criminal cases a proceeding in the nature of a writ of error coram nobis, to be governed by the same rules and procedure applicable to the writ of error coram nobis in civil cases, except insofar as inconsistent herewith Upon a showing

¹An accused who wishes to plead guilty yet assert his innocence may enter what is known as a “best interest” guilty plea. See North Carolina v. Alford, 400 U.S. 25, 37-38 (1970).

by the defendant that the defendant was without fault in failing to present certain evidence at the proper time, a writ of error coram nobis will lie for subsequently or newly discovered evidence relating to matters which were litigated at the trial if the judge determines that such evidence may have resulted in a different judgment, had it been presented at the trial.

Generally, a decision whether to grant a writ of error coram nobis rests within the sound discretion of the trial court. See State v. Hart, 911 S.W.2d 371, 375 (Tenn. Crim. App. 1995).

In 2016, our supreme court reversed Wlodarz v. State, 361 S.W.3d 490 (Tenn. 2012), which held that a Petitioner who had entered a guilty plea could challenge his convictions by writ of error coram nobis under Tennessee Code Annotated section 40-26-105. The court held that “the coram nobis statute is not available as a procedural mechanism for collaterally attacking a guilty plea.” Frazier v. State, 495 S.W.3d 246, 253 (Tenn. 2016). The court in a footnote “recognize[d] that a criminal defendant who enters an Alford plea may have a stronger public policy argument than other criminal defendants for the right to seek error coram nobis relief, the issue remains one of a policy judgment which is within the province of the legislature, not this Court.” Frazier, 495 S.W.3d at 250 n.1. This court has held that Frazier applies to a petitioner who enters an Alford or best interest plea. Ronald Christopher Hayes v. State, No. M2016-01094-CCA-R3-ECN, 2017 WL 4315375, at *2-3 (Tenn. Crim. App. at Nashville, Sept. 27, 2017). Although the Petitioner urges this court to ignore the ruling in Frazier, as an intermediate court, we must comply with the dictates of our supreme court. State v. Brown, 373 S.W.3d 565, 574 (Tenn. Crim. App. 2011) (citing Barger v. Brock, 535 S.W.2d 337, 341 (Tenn. 1976)). Therefore, even if the statute of limitations were tolled, the Petitioner would not be entitled to coram nobis relief. See Tamir Clark v. State, No. M2016-01079-CCA-R3-ECN, 2017 WL 568546, at *2 (Tenn. Crim. App. at Nashville, Feb. 13, 2017); Gregory L. Hatton v. State, No. M2016-00225-CCA-R3-ECN, 2016 WL 4082465, at *1 (Tenn. Crim. App. at Nashville, Aug. 1, 2016). Accordingly, we conclude that the coram nobis court did not err by dismissing the petition.

III. Conclusion

The judgment of the coram nobis court is affirmed.

NORMA MCGEE OGLE, JUDGE