

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT JACKSON  
Assigned on Briefs December 3, 2019

FILED

02/19/2020

Clerk of the  
Appellate Courts

**STATE OF TENNESSEE v. TERRELL LAMONT REID**

**Appeal from the Circuit Court for Madison County  
No. 15-60 Kyle Atkins, Judge**

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**No. W2019-00636-CCA-R3-CD**

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The Defendant, Terrell Lamont Reid, pursuant to a plea agreement, pleaded guilty to possession of cocaine with intent to sell and to possession of a firearm by a convicted felon and received an effective seventeen-year sentence. He filed a motion pursuant to Tennessee Rule of Criminal Procedure 36.1 alleging that his sentence was illegal because his firearm offense sentence was enhanced under the criminal gang enhancement statute. The trial court summarily dismissed the motion after determining that the sentence was not illegal. On appeal, he contends that the trial court erred by denying relief because the enhanced sentence for his firearm conviction was unconstitutional and illegal. We reverse the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Reversed;  
Case Remanded**

ROBERT H. MONTGOMERY, JR., J., delivered the opinion of the court, in which CAMILLE R. MCMULLEN and J. ROSS DYER, JJ., joined.

Terrell Lamont Reid, Whiteville, Tennessee, Pro Se.

Herbert H. Slatery III, Attorney General and Reporter; James E. Gaylord, Senior Assistant Attorney General; and Jody Pickens, District Attorney General, for the appellee, State of Tennessee.

**OPINION**

On July 15, 2015, the Defendant pleaded guilty to possession of cocaine with intent to sell and to possession of a firearm by a convicted felon. The Defendant received a seventeen-year sentence as a Range II offender for the possession of cocaine with intent to sell conviction and a concurrent seventeen-year sentence as a Range II offender for the possession of a firearm by a convicted felon conviction. The firearm conviction was

enhanced by the criminal gang enhancement statute, Tennessee Code Annotated section 40-35-121(b), which elevated it from a class C felony to a class B felony.

On April 7, 2016, this court held that the criminal gang enhancement statute was unconstitutional, as it violated substantive due process. *See State v. Bonds*, 502 S.W.3d 118, 158-60 (Tenn. Crim. App. 2016). The record does not reflect that the Defendant filed a petition for post-conviction relief challenging his enhanced sentence following the ruling in *Bonds*.

On January 14, 2019, the Defendant filed a motion pursuant to Tennessee Criminal Procedure Rule 36.1 requesting that the trial court correct an illegal sentence because his enhanced sentence for his firearm conviction was “void, illegal, and unconstitutional[.]” The trial court summarily dismissed the motion on February 26, 2019, concluding that the judgment contained no illegality pursuant to *State v. Minor*, 546 S.W.3d 59 (Tenn. 2018) (holding that “new rules apply retroactively to cases pending on direct review when the new rule is announced but must do so subject to existing jurisprudential principles, such as appellate review preservation requirements and the plain error doctrine”). The court reasoned that because the Defendant pleaded guilty on June 24, 2015, and the judgments were entered on July 15, 2015, both of which were before *Bonds*, *Bonds* did not apply to the Defendant’s case. The Defendant appealed.

The Defendant contends that the trial court erred by summarily dismissing his motion to correct an illegal sentence because application of the criminal gang enhancement statute rendered the sentence for his firearm conviction illegal. He argues that the trial court lacked the jurisdiction to enhance his sentence because the criminal gang enhancement statute was unconstitutional from its inception. The State responds that the motion fails to state a colorable claim for relief because the invalidation of the criminal gang enhancement statute rendered the Defendant’s sentence voidable, not void.

Tennessee Criminal Procedure Rule 36.1 states, in relevant part, that

(a)(1) Either the defendant or the state 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)(2) For purposes of this rule, an illegal sentence is one that is not authorized by the applicable statutes or that directly contravenes an applicable statute.

The trial court is required to file an order denying the motion if it determines that the

sentence is not illegal. *Id.* at 36.1(c)(1).

Whether a motion for Rule 36.1 relief states a colorable claim is a question of law and is reviewed de novo. *State v. Wooden*, 478 S.W.3d 585, 588 (Tenn. 2015). A colorable claim is defined as “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.” *Id.* at 593. A motion filed pursuant to Rule 36.1 “must state with particularity the factual allegations on which the claim for relief from an illegal sentence is based.” *Id.* at 594. A trial court “may consult the record of the proceeding from which the allegedly illegal sentence emanated” when determining whether a motion states a colorable claim for relief. *Id.*

Only fatal errors result in an illegal sentence and “are so profound as to render the sentence illegal and void.” *Id.* at 595; *see State v. Cantrell*, 346 S.W.2d 445, 452 (Tenn. 2011). Fatal errors include sentences imposed pursuant to an inapplicable statutory scheme, sentences that designate release eligibility dates when early release is prohibited, sentences that are ordered to be served concurrently when consecutive service is required, and sentences that are not authorized by statute. *Wooden*, 478 S.W.3d at 595. Errors which are merely appealable, however, do not render a sentence illegal and include “those errors for which the Sentencing Act specifically provides a right of direct appeal.” *Id.*; *see Cantrell*, 346 S.W.2d at 449. Appealable errors are “claims akin to . . . challenge[s] to the sufficiency of the evidence supporting a conviction” and “involve attacks on the correctness of the methodology by which a trial court imposed sentence.” *Wooden*, 478 S.W.3d at 595; *see Cantrell*, 346 S.W.2d at 450-52.

We conclude that the application of an unconstitutional law renders a sentence void, and therefore, illegal. In *Jason Perry v. State*, a panel of this court held that the Defendant’s sentence enhanced under the criminal gang enhancement statute rendered the Defendant’s sentence illegal because the statute was unconstitutional on its face. No. E2018-00824-CCA-R3-PC, 2019 WL 1077038, at \*6 (Tenn. Crim. App. Mar. 7, 2019) (citing *Archer v. State*, 851 S.W.2d 157, 160 (Tenn. 1993) (holding that the writ of habeas corpus “is available to contest convictions imposed under unconstitutional statutes, because an unconstitutional law is void and can, therefore, create no offense”)); *see State v. Dixon*, 530 S.W.2d 73, 74 (Tenn. 1975) (holding that a criminal statute that is unconstitutional on its face is void from the date of its enactment and cannot provide the basis for a valid conviction); *State v. Kaylecia Woodard*, No. E2016-00676-CCA-R3-CD, slip op. at 15 (Tenn. Crim. App. June 15, 2017) (holding that because Code section 40-35-121(b) was unconstitutional on its face, it was void ab initio without consideration of the “retrospective application of the ruling in *Bonds*”). *But cf. Taylor v. State*, 995 S.W.2d 78, 80, 85 (Tenn. 1999) (case published prior to creation of Tennessee Criminal Procedure Rule 36.1 concluding that a sentence was voidable rather than void when it was imposed under a statute that was later found unconstitutional with the effective of

reviving an earlier statute). *Jason Perry* is a habeas corpus case, but its holding is applicable here because “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.” *Wooden*, 478 S.W.3d at 594-95. We agree with the reasoning in *Jason Perry* and conclude that the Defendant is entitled to relief under Rule 36.1. The decision in *Bonds* renders the Defendant’s enhanced sentence for his firearm conviction illegal, and the judgment is void.

Based on the foregoing and the record as a whole, we reverse the judgment of the trial court and remand the case for the trial court to determine whether the illegal aspect was a material component of the plea agreement and further determinations consistent with Tennessee Criminal Procedure Rule 36.1(c)(3)(A)-(C).

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ROBERT H. MONTGOMERY, JR., JUDGE