IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs February 12, 2013

EARL VANTREASE, JR. v. STATE OF TENNESSEE

Direct Appeal from the Circuit Court for Hickman County
No. 12CV43 Robbie Beal, Judge

No. M2012-02023-CCA-R3-HC - Filed May 6, 2013

In 2003, a Putnam County jury convicted the Petitioner, Earl Vantrease, Jr., of aggravated robbery, and the trial court sentenced him to serve sixteen years, at 35%. In 2006, the Petitioner filed a petition for writ of habeas corpus, contending that his judgment was void. The habeas corpus court summarily dismissed the petition, and this Court originally affirmed. *Earl Vantrease, Jr. v. Wayne Brandon, Warden*, No. M2006-02414-CCA-R3-HC, 2007 WL 2917783, at *1 (Tenn. Crim. App., at Nashville, Oct. 9, 2007), *petition rehearing granted*, Dec. 14, 2007. The Petitioner filed a motion for a rehearing, provided additional documentation, and this Court reversed itself and remanded the case for an evidentiary hearing on the merits of the Petitioner's habeas corpus petition. *Id.* at *6. After an evidentiary hearing, the habeas corpus court again dismissed the Petitioner's petition for habeas corpus relief. The Petitioner did not appeal, but, instead, he filed a second petition for habeas corpus relief. The habeas corpus court summarily dismissed the Petitioner's second petition for habeas corpus relief. On appeal, the Petitioner contends the habeas corpus court erred when it dismissed his second petition. After a thorough review of the record and applicable authorities, we affirm the habeas corpus court's dismissal of the Petitioner's application for writ of habeas corpus.

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

ROBERT W. WEDEMEYER, J., delivered the opinion of the Court, in which JERRY L. SMITH, J., joined. JEFFREY S. BIVINS, J., not participating.

Earl R. Vantrease, Jr., pro se, Mountain City, Tennessee.

Robert E. Cooper, Jr., Attorney General and Reporter; Brent C. Cherry, Assistant Attorney General; Kim Helper, District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Facts

This procedurally complex case arises from an aggravated burglary committed by the Petitioner. In our opinion in the Petitioner's appeal of his first petition for habeas corpus relief, we summarized the facts as follows:

> On April 24, 2003, a Putnam County jury convicted the Petitioner of aggravated robbery, a Class B felony. *See* Tenn. Code Ann. § 39-13-402. On July 31, 2006, the Petitioner filed an application for the writ of habeas corpus in the Hickman County Circuit Court, arguing that his imprisonment is "the result of a void judgment of conviction" because he has "prevailed on a[p]ost-conviction [p]etition resulting in the reversal of the conviction." Specifically, the Petitioner states as follows:
>
> > On July 25, 2003[,] the [s]entencing [h]earing was held. The trial/sentencing court deliberately refused to impose a sentencing [sic] on the grounds that he [sic] found the trial counsel [sic] had been ineffective by failing to call favorable witness [sic] to come testify at trial . . . . The trial court deemed trial counsel ineffective and terminated trial counsel's representation of the Petitioner.
> >
> > In the month of April 2004, during a [m]otion [f]or [n]ew [t]rial hearing, the Petitioner, pro se, filed a [p]ost-[c]onviction petition in "open court" in the Putnam County Criminal Court before the trial court judge.
> >
> > The trial court allowed the Petitioner to verbally enter the issues of the petition upon the record while testifying under oath.
> >
> > After hearing several of the issues the trial court stated he [sic] finds grounds to grant the petition.
> >
> > On June 21, 2004, the Petitioner received an [a]dministrative [d]ischarged [sic] from the custody of the Tennessee Department of Correction, by the Tennessee Department of Correction in compliance to a COURT ORDER

. . . .

> The Petitioner was returned to his freedom.
>
> . . . .
>
> On December 30, 2005, the Petitioner was arrested on a traffic violation by the Mt. Juliet police . . . .
>
> . . . .
>
> According to the current record[,] the Petitioner has been remanded to the custody of the Department of Correction for the same and exact offense, charge, and conviction in which the original trial court had previously reversed and dismissed . . . .

The court in this habeas corpus proceeding summarily dismissed the petition and did not grant the Petitioner's request for counsel, and the Petitioner is proceeding pro se on appeal. The record on appeal before this Court contains the petition, the State's motion to dismiss the petition, the Petitioner's response to the motion to dismiss, the order of dismissal, and the Petitioner's motion to alter or amend the judgment.

The Petitioner attached to his habeas corpus petition a copy of the judgment of conviction, which reflects that the Petitioner received a sixteen-year sentence to be served at 35% as a Range II, multiple offender. The sixteen-year sentence was to be served consecutively "to the Wilson County case numbers 980085 and 980086." The judgment shows a "Sentence-imposed date" of July 25, 2003. The judgment is signed by the trial judge and provides that the "Date of Entry of Judgment" was December 16, 2005.

The Petitioner also provided several other documents as attachments to his petition. First, he attached an affidavit of trial counsel, which states that, at the July 25, 2003 hearing, the trial judge "deliberately refused to impose a sentence because he discovered [trial counsel] never subpoenaed [the Petitioner's] defense witnesses to trial." Trial counsel continues that he was thereafter determined to be ineffective and removed from further representation of the Petitioner. Finally, trial counsel states, "I don't remember if you were granted a new trial but I am certain you were never sentenced

based on the above grounds."

The next attachment is an apparent record from the Department of Correction (DOC) showing the "arrival/departure" of the Petitioner from custody. The document reflects that, pursuant to a court order, the Petitioner was administratively discharged from custody on June 21, 2004. The document further shows a court-ordered administrative correction on December 30, 2005, returning the Petitioner to the custody of the DOC.

Finally, the Petitioner provided arrest records in support of his petition. The arrest report reflects that the Petitioner was stopped on December 30, 2005, for a traffic violation. The officer determined that there was "an active warrant" on the Petitioner "out of Putnam County." The Petitioner was taken into custody.

The State's motion for summary dismissal was filed on August 18, 2006. The State sought dismissal of the petition on the basis that the Petitioner had not stated a cognizable claim for relief and, additionally, noted in its memorandum in support of the motion that the Petitioner had failed to support his claim with sufficient documentation. The State attached two documents to the motion-an order overruling the Petitioner's motion for a new trial signed by the trial judge on April 6, 2004, filed on April 12, 2004, and a document signed by the Petitioner reflecting that he waived any direct appeal of his conviction, filed on May 4, 2004.

The habeas corpus court granted the State's motion to dismiss and entered an order of dismissal on August 23, 2006. The Petitioner's response to the motion to dismiss was not considered by the habeas corpus court in its decision to dismiss summarily since it was received after the order was filed.

The Petitioner attached further documentation to his response. Again, apparent DOC documents which reflect that the Petitioner was transferred to court on April 2, 2004, and that he received a court-ordered administrative discharge on June 21, 2004.

The Petitioner also supplied an affidavit of "the primary officer that responded to the robbery" at issue. In the affidavit, the officer admits to pulling the Petitioner over on I-40, beating the Petitioner, and taking $30,000 from him. According to the affidavit, the officers offered to release the Petitioner from custody in exchange for the Petitioner selling drugs for the

officers, but the Petitioner refused and was taken to jail for aggravated robbery. The officer admits to giving false testimony against the Petitioner at trial and states that "[a]lmost every official in Putnam County is involved in the illegal drug business . . . ." Finally, the officer states that the Petitioner "was released after winning his case on post-conviction. However the D.A. has re-arrested him & imposed a 16 year sentence against him without a new trial or indictment . . . ."

The Petitioner filed a motion to alter or amend the judgment on September 25, 2006. No action was taken on this motion. A notice of appeal was likewise filed on September 25, 2006.

This appeal followed. In his brief on appeal, the Petitioner has again attached further documentation in support of his claim. FN1 Notably, he has attached an affidavit purportedly from the assistant district attorney general involved in prosecuting the Petitioner for aggravated robbery. The assistant district attorney acknowledges in the affidavit that the Petitioner was granted post-conviction relief in 2004 and that the Petitioner was "falsely arrested" in 2005. He further states that the judgment form was forged in retaliation for the Petitioner's lawsuit against Putnam County.

> FN1. We point out that the authenticity of the various attachments has not been established. We mention the attachments only because the Petitioner attempts to rely upon them on appeal.

The Petitioner has also attached a memorandum allegedly signed by the prison warden. In the memorandum, the warden states in pertinent part as follows:

> The [d]istrict [a]ttorneys had full authority to incarcerate you for suing the state . . . Either you accept the punishment that has been given you or you will [sic] subjected to physical harm or possible death should you challenge [Putnam County officials] in any legal action. You are not entitled to immediate release although you are imprisoned without basis.

The Petitioner has also provided additional documents from the DOC. The documents represent DOC "contact notes." The comments contained in the January 11, 2006 contact note indicate in pertinent part as follows:

> Our office received case # 02-0666 Ct 1-16yrs 35% agg robb to serve consecutive to Wilson Co. case # 980085 and 980086 sentenced on 7-25-03 but was not sent to DOC for entry, the order was misplaced by the DA's office. DA's office was notified by the court clerk's office that this offender did not have a J/O. The DA's office sent the order with a date of entry of 12-16-05, which is the date the judge signed this order.
>
> I contacted the DA's office in regards to the conflicting dates and spoke with David Patterson who handled this case and he stated that it was not originally done when he was sentenced back in '03. And the judge knew also. He stated that we needed to start the sentence on 7-25-03 and make it consecutive to the Wilson Co. cases.
>
> Talked this over with the Mgr. of SCS and she stated that is the way we will place it on TOMIS and modify LIMD (he was showing esp on the Wilson Co. cases 6-21-04) to show him released in error and take time from 6-21-04 till he is back in custody.

Vantrease, 2007 WL 2917783, at *1-4.

In the first habeas corpus petition, the Petitioner raised four issues: (1) the trial court's summary dismissal denied him the opportunity to respond to the State's motion to dismiss the habeas corpus petition; (2) the State was required to respond to his petition for a writ of habeas corpus and that a motion to dismiss does not satisfy this requirement; (3) pursuant to Tennessee Rule of Civil of Procedure 59.04, he filed a motion for alteration or amendment of the judgment of the habeas corpus court dismissing his petition summarily, and he avers that the habeas corpus court did not rule on this motion; (4) the judgment of conviction for aggravated robbery is void because he had previously been granted post-conviction relief from that conviction and the conviction had been vacated. *Vantrease*, 2007 WL 2917783, at *4. This Court denied the Petitioner relief based upon his first three issues. *Id.* We then addressed the Petitioner's fourth issue and held that the Petitioner had stated a cognizable claim for habeas corpus relief, but we affirmed summary dismissal due to the Petitioner's failure to attach the requisite documentation in support of his claim that the judgment was void. *Id*. at *5.

The Petitioner filed a motion to reconsider, attached to which he filed several supporting documents. Based upon this additional documentation, we held:

Along with his Petition for Rehearing, the Petitioner has again attached further documentation in support of his claim that the judgment of conviction for aggravated robbery is void because he has previously been granted post-conviction relief from that conviction and the conviction has been vacated. In our previous opinion, we noted that the record did not contain (1) an order of the trial court reflecting that post-conviction relief was granted and the conviction vacated or (2) a transcript from the underlying proceedings showing that he was granted post-conviction relief. The Petitioner has now attached a transcript of the July 25, 2003 sentencing hearing and an order of the trial court; both show that he was granted post-conviction relief and that the aggravated robbery conviction was vacated. The Petitioner asserts that he originally filed these documents with his petition and that these documents reflected a "stamp-filed" date of July 31, 2006, the same day the habeas corpus petition was filed. He asserts that the clerk of the Hickman County Circuit Court failed to transmit a complete record to this Court on appeal and states, "[T]his isn't the Pet'rs fault although he is sorry that the habeas court did not carry out it's end."

First, the transcript of the July 25, 2003 sentencing hearing provided by the Petitioner does show that the Petitioner was granted post-conviction relief. After imposing a sentence of sixteen years and denying the Petitioner's motion for new trial, the trial court inquired of the Defendant if he had anything he "would like to add or say[.]" The Petitioner then stated his concerns with trial counsel's representation:

> I had about thirty (30) witnesses who wanted to come to trial and testify in my defense and my attorney was well aware of this. But he, my attorney, tried to con me out of more money-my attorney told me that he couldn't do so unless I gave him five hundred (500) more dollars so he could hire an investigator to track down my witnesses.

Trial counsel responded that "maybe" the Petitioner was correct that he had not been represented "properly." Trial counsel continued that he was "just tired of representing" the Petitioner and that he "would love to be off of this case."

Without any further proof, the trial court ruled that there existed a "conflict of interest" between the Petitioner and trial counsel and vacated the sixteen-year sentence and conviction for aggravated robbery. According to the

transcript, the court allowed a conviction for criminal impersonation to stand.

The Petitioner has also provided an order dated April 2, 2004, and signed by the trial judge. The order states that the Petitioner sought post-conviction remedies in his amended motion for new trial, reflects that the aggravated robbery conviction and sentence is vacated, and also shows that the conviction for criminal impersonation is reversed and the charges dismissed.

While questionable in nature, the documentation now provided by the Petitioner is sufficient to support his claim. An evidentiary hearing is required to determine whether all of the documents provided by the Petitioner, including those referenced in the original opinion and those referenced herein, are authentic. This Court is not in a position to determine the authenticity of these documents, as such a determination implicates fact-finding authority; our jurisdiction is appellate only. *See* Tenn. Code Ann. § 16-5-108. If the documents are determined to be authentic, then the Department of Correction is without further authority to detain the Petitioner. If the documents are determined to be forged, the Petitioner has attempted to perpetrate a fraud upon the court in order to obtain habeas corpus relief, and any action deemed appropriate may be commenced against the Petitioner.

Upon due consideration, we conclude that the Petition for Rehearing is well taken and should, therefore, be GRANTED. Accordingly, for good and sufficient reasons appearing to the court, the opinion in this case should be amended to reflect that the judgment of the trial court dismissing the habeas corpus petition is reversed. This case is remanded for an evidentiary hearing on the merits of the petition. The original opinion is modified to incorporate the contents of this opinion granting the Petition for Rehearing.

Vantrease, 2007 WL 2917783, at *6.

On remand, the habeas corpus court held an evidentiary hearing to determine the merits of the Petitioner's claims. At the evidentiary hearing on the Petitioner's first petition for habeas corpus relief, the Petitioner's appointed attorney told the habeas corpus court that, after investigating the case, he felt that there were valid grounds for him to withdraw from the case. He stated that he had contacted the Board of Professional Responsibility about the matter, and they recommended that the Petitioner present his own arguments in "narrative" form. The habeas corpus court acknowledged that some of the documents upon which the Petitioner relied were "questionable," which placed the Petitioner's attorney in a dilemma.

With the parties agreeing the Petitioner would testify in a narrative fashion, with minor assistance from his habeas corpus counsel, the Petitioner took the stand to testify. Before allowing him to testify, the habeas corpus court reminded the Petitioner that, "If the documents are determined to be forged, the [P]etitioner . . . had attempted to perpetrated a fraud upon the Court in order in which to obtain habeas corpus relief and any action deemed appropriate may be commenced against the [P]etitioner." The habeas corpus court ensured the Petitioner understood the meaning of this language before he allowed him to testify.

The Petitioner then testified that he was serving a sentence of sixteen years, at thirty-five percent, for aggravated robbery and criminal impersonation. He said that he was convicted after a jury trial and that the same attorney, ("Counsel") represented him at both the trial and the sentencing hearing. The Petitioner said that his sentencing hearing and his motion for new trial were held on the same day. He said that, after the trial court denied his motion for new trial, the trial court asked the Petitioner if he had anything to say. The Petitioner then informed the trial court the manner in which he felt his trial counsel was ineffective. The Petitioner testified that Counsel "basically conceded" to the Petitioner's recount of events. He said that the trial court then "felt like it was good cause for him to set [the Petitioner's] sentence aside." The Petitioner testified that "the same sentences that the Judge initially gave me probably, you know, like 15 minutes prior to that, he set it aside and vacated it." The Petitioner said the trial court vacated his sentence on the basis that Counsel was ineffective.

The Petitioner testified that he asked his habeas corpus counsel to subpoena the trial judge's handwritten notes, because he was certain they would confirm that the judge vacated his sentence. He said he further requested that his habeas corpus counsel subpoena the original stenography of the hearing. He explained that the court reporter who had created the transcript which he had of the hearing had passed away. A newly appointed court reporter created a second transcript, which he said varied dramatically from the one he had previously been given.

The Petitioner said that, after the trial court found Counsel ineffective, the trial court appointed him a new attorney, ("Counsel II"). Counsel II filed a motion for a new trial on his behalf, which was argued almost a year after his sentencing hearing. The trial court denied the motion for a new trial. The Petitioner said he did not appeal this ruling because he knew that, since there had been no second sentencing hearing, he did not "even have a sentence." He said that, therefore, he did not want to appeal his case because he did not want the appellate court to remand the case for entry of a sentence and judgment.

The Petitioner said that he "kn[e]w for a fact my judgment of conviction [for aggravated robbery], it was vacated." He said the trial court set aside the judgment before

he entered the sentence. The Petitioner said that this is reflected in the transcript of the hearing that he filed with the habeas corpus court.

The Petitioner testified that, years after his original sentencing hearing, a judgment order was filed. The judgment order, however, did not accurately reflect what occurred at the sentencing hearing. The Petitioner said that the trial court signed off on the judgment because of facts that the local district attorney misrepresented to the trial court. The Petitioner testified the district attorney never showed the trial court records showing his sentence had been vacated.

The Petitioner testified that he had submitted a brief to the habeas corpus court that raised four grounds that he thought entitled him to habeas corpus relief. Two of those grounds were based on a motion to suppress that he had filed before his trial, which the trial court denied. He said officers used excessive force when they transported him. He further said that the two witnesses who identified him were told by the detective that he was the alleged robber and that the detective just wanted the witnesses to verify that the Petitioner was indeed the robber. The Petitioner said he filed a transcript of the suppression hearing wherein this evidence was presented. The Petitioner testified that, while his trial attorney filed and argued the motion to suppress, he did not argue it adequately.

His third ground alleged that the trial court lost jurisdiction to sentence him because it did not allow him to present one of his witnesses at trial. The Petitioner contended that a news report quoted the chief of police as stating that no weapon was found in the Petitioner's vehicle when it was searched. At trial, however, the State offered evidence that a knife had been found in the vehicle. The Petitioner sought to introduce the testimony of the reporter, but the trial court ruled it was inadmissible hearsay.

The fourth ground was based upon the allegation that his due process rights were violated by his not being present when the judgment of conviction was signed by the trial judge.

The Petitioner testified that the transcript of the sentencing hearing that he submitted was accurate, and he could not contradict what it reflected. This included the trial court overturning both his conviction and his sentence. He said he understood that there was a different transcript from that sentencing hearing that showed otherwise, and he asked the trial court to provide him the original stenographic tape and the trial court's personal notes.

The Petitioner's attorney informed the trial court that his investigation into this issue did not indicate that he needed to obtain the original stenographic tape. He, therefore, encouraged the Petitioner to present this request to the habeas corpus court.

During cross-examination, the Petitioner testified that the Court of Criminal Appeals said in their original opinion that the Petitioner would have to attach a copy of documents supporting his claim. The Petitioner shortly thereafter filed a petition to rehear, attached to which was a copy of the sentencing hearing wherein he said the trial court vacated his conviction and sentence because Counsel was ineffective. The Petitioner said there must be an order signed by Judge Burns showing that his conviction was vacated.

The Petitioner then opined that "a lot of fraudulent stuff [] goes on in Cookeville" and that there were "so many conspiracies." He said that court personnel had "fabricated documents" in his case, evidenced by the fact that there were two differing transcripts from his sentencing hearing.

The Petitioner agreed that, attached to his habeas corpus petition, was an affidavit from the officer who arrested him and also from the warden. He said he "got them to make . . . an affidavit for [him]." The Petitioner agreed that, in the affidavit, the officer who arrested him swore that he had arrested the Petitioner illegally, beat him up, and attempted to get him to sell drugs illegally. The Petitioner said the officer admitted to this because the Petitioner had "people" who "help [him] track" the officers down to get to the bottom of this matter. The Petitioner said he did not fabricate the affidavits. He further testified that he had not forged any of the documents that he had submitted to the habeas corpus court. The Petitioner testified that the officer who arrested him, Reno Martin, was later arrested by the FBI and served a prison term. He said the investigator on his case, Jerry Epson, Jr., was arrested in Knoxville for attempting to sell a kilo of cocaine.

Based upon this evidence, the habeas corpus court found:

> The Court has now had an opportunity to fully examine what's been marked as Exhibit 1 today and Exhibit 2 which is the certified copy of the record from the clerk, circuit court clerk out of Putnam county, and Exhibit 3 which was the . . . [P]etitioner's appellate brief and the documents attached to all those . . . documents.
>
> As was indicated at the beginning of this hearing, this Court's task today was to try to follow the directive of the Court of Criminal Appeals in its opinion on the rehearing wherein they found good and sufficient reason, appearing to the Court, that the case should be amended to reflect that the judgment of the trial court dismissing the habeas corpus was reversed and the case was remanded back for an evidentiary hearing on the merits of the petition.

The Court I believe now has done what the Court of Criminal Appeals has asked of it to do, to give this [P]etitioner an evidentiary hearing on the merits of his petition, and I believe he's been afforded a fair and full hearing on his Writ of Habeas Corpus.

The Court has carefully considered all the evidence presented here today as well as all of that as part of this rather lengthy record.

When a petition for habeas corpus is sought, at least in the state of Tennessee, an inquiry has to be made into the cause of such punishment. The Court of [C]riminal [A]ppeals has explained that habeas corpus relief is available in Tennessee only when it appears on the face of the judgment or the record of the proceedings upon which the judgment is rendered that a convicting court was without jurisdiction or authority to sentence a defendant or that the defendant's sentence of imprisonment or other restraint has expired. Those are the two basis for which a court would be allowed to grant the extraordinary relief of a Writ of Habeas Corpus.

In making a determination of the issue of jurisdiction as it affects a Writ of Habeas Corpus, the Court has to be satisfied that there was some undue delay in executing your sentence. And in this case you've argued that you were convicted and the record is clear on several occasions you believe you're rightly convicted. It was just that the sentencing judgment was not signed until some months or actually a couple years later. . . . [T]here is nothing in the record that seems to indicate that that's not what happened. In other words, it would appear from the record that is what happened. He was convicted in sometime in '03 and then the judgment wasn't signed until 2005. But I find that that delay does not rise to action, state action that constitutes more than mere negligence. It is not actions that affirmatively were improper or grossly negligent. And . . . furthermore, I find that the action of not signing the judgment for purposes of attacking a jurisdictional issues is not inconsistent with the fundamental principles of liberty and justice in this case. It might be so if the sentence were a little bit shorter, but in this case the sentence was 16 years and that was . . . an appropriate sentence for aggravated robbery as a range two multiple offender, so his incarceration is not unequivocally or inconsistent with fundamental principles of liberty or justice. The sentence was the appropriate sentence of 16 years. It could have been more actually within that range. And, again, too, I cannot make a finding that the State's actions constitute more than mere negligence. There's nothing in the record that would support such a finding.

So even on the one issue of jurisdictional problems, I cannot make a finding that that rises to the level of relief under a Writ of Habeas Corpus.

And those are the only two issues that the Court is to consider in habeas corpus relief petition. Whether it appears on the judgment, on the face of the judgment or the record or the proceedings that the judgment . . . is rendered by a convicting court that was without jurisdiction, and I have now found that court had jurisdiction, and certainly your sentence has not expired as it is an appropriate 16-year sentence.

I agree with the Court of [Criminal] Appeals in its opinion that several of these documents are questionable and the authenticity of these documents is highly suspicious, but I'm not at this point going to make a finding that you are attempting to perpetrate a fraud on this Court. I'm not going to make that finding in my ruling today, but I have made copies of at least three of these affidavits. One belonging to this police officer that we've talked about. One belonging to . . . the warden . . . . One that's supposedly . . . the affidavit of a Wayne Brandon. And also I have made a copy of the affidavit of General Patterson, now Judge Patterson, that comes . . . out of your appellate brief. And I will be submitting those to Judge Patterson for his determination on how he wants to proceed with those.

I will not . . . what I'll do instead of Judge Patterson it's Judge Burns. I'll let him determine how he wants to proceed with those, but I'm not . . . making an affirmative finding for today's ruling that you are trying to perpetrate a fraud. I'm just simply denying and dismissing your petition for Writ of Habeas Corpus based upon the grounds that I've stated in the record.

The Petitioner did not appeal this order of the habeas corpus court, issued in November 2011. On July 26, 2012, the Petitioner filed another application for writ of habeas corpus. In that petition, he asserts he was prevented from perfecting an appeal of the November 2011 order because "the Circuit Court never mailed him a copy of the order dismissing the petition – as it promised." The Petitioner raises the same grounds as the first petition, but he adds additional issues. The additional issues include that the trial court improperly enhanced his sentence and did not allow him to speak on his own behalf at his sentencing hearing.

The State filed a motion to dismiss the application for writ of habeas corpus, arguing that many of the Petitioner's claims were not cognizable claims pursuant to the law

governing habeas corpus. The State also contended that the trial court's delay in signing the judgment did not entitle the Petitioner to habeas corpus relief, citing *Arzolia Charles Goines v. Glen Turner, Warden*, No. E2004-00289-CCA-R3-HC, 2004 WL 2439291, at *2 (Tenn. Crim. App., at Knoxville, Nov. 1, 2004). The habeas corpus court agreed and summarily dismissed the Petitioner's application for writ of habeas corpus. It is from this judgment that the Petitioner now appeals.

II. Analysis

On appeal, the Petitioner asserts that he is entitled to habeas corpus relief because: (1) his show-up identification violated his due process rights; (2) he was denied due process when the trial court denied his request to present a witness at trial; (3) the State "waiv[ed]" its right to incarcerate him because he was released for 540 days before a judgment of conviction was signed and entered; (4) the trial court improperly enhanced his sentence; (5) the trial court did not order the accurate amount of pretrial jail credits; and (6) he was denied his due process rights during his sentencing and "capias hearing." The State counters and addresses each of the Petitioner's arguments, noting that none of them entitle the Petitioner to habeas corpus relief. We agree with the State.

Article I, section 15 of the Tennessee Constitution guarantees the right to seek habeas corpus relief. *See Faulkner v. State*, 226 S.W.3d 358, 361 (Tenn. 2007). Although the right is guaranteed in the Tennessee Constitution, the right is governed by statute. T.C.A. §§ 29-21-101,-130 (2012). The determination of whether habeas corpus relief should be granted is a question of law and is accordingly given de novo review with no presumption of correctness given to the findings and conclusions of the court below. *Smith v. Lewis*, 202 S.W.3d 124, 127 (Tenn. 2006) (citation omitted); *Hart v. State*, 21 S.W.3d 901, 903 (Tenn. 2000). Although there is no statutory limit preventing a habeas corpus petition, the grounds upon which relief can be granted are very narrow. *Taylor v. State*, 995 S.W.2d 78, 83 (Tenn. 1999). It is the burden of the petitioner to demonstrate by a preponderance of the evidence that "the sentence is void or that the confinement is illegal." *Wyatt v. State*, 24 S.W.3d 319, 322 (Tenn. 2000). In other words, the very narrow grounds upon which a habeas corpus petition can be based are as follows: (1) a claim there was a void judgment which was facially invalid because the convicting court was without jurisdiction or authority to sentence the defendant; or (2) a claim the defendant's sentence has expired. *Stephenson v. Carlton*, 28 S.W.3d 910, 911 (Tenn. 2000); *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993). "An illegal sentence, one whose imposition directly contravenes a statute, is considered void and may be set aside at any time." *May v. Carlton*, 245 S.W.3d 340, 344 (Tenn. 2008) (citing *State v. Burkhart*, 566 S.W.2d 871, 873 (Tenn. 1978)). In contrast, a voidable judgment or sentence is "one which is facially valid and requires the introduction of proof beyond the face of the record or judgment to establish its invalidity." *Taylor*, 995 S.W.2d at 83 (citations

omitted); *see State v. Ritchie*, 20 S.W.3d 624, 633 (Tenn. 2000).

The petitioner bears the burden of showing, by a preponderance of the evidence, that the conviction is void or that the prison term has expired. *Passarella v. State*, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994). Furthermore, the procedural requirements for habeas corpus relief are mandatory and must be scrupulously followed. *Archer*, 851 S.W.2d at 165. The formal requirements for a petition for a writ of habeas corpus are found at Tennessee Code Annotated section 29-21-107:

> (a) Application for the writ shall be made by petition, signed either by the party for whose benefit it is intended, or some person on the petitioner's behalf, and verified by affidavit.
>
> (b) The petition shall state:
>
> > (1) That the person in whose behalf the writ is sought, is illegally restrained of liberty, and the person by whom and place where restrained, mentioning the name of such person, if known, and, if unknown, describing the person with as much particularity as practicable;
> >
> > (2) The cause or pretense of such restraint according to the best information of the applicant, and if it be by virtue of any legal process, a copy thereof shall be annexed, or a satisfactory reason given for its absence;
> >
> > (3) That the legality of the restraint has not already been adjudged upon a prior proceeding of the same character, to the best of the applicant's knowledge and belief; and
> >
> > (4) That it is first application for the writ, or, if a previous application has been made, a copy of the petition and proceedings thereon shall be produced, or satisfactory reasons be given for the failure so to do.

A habeas court may dismiss a petition for habeas corpus relief that fails to comply with these procedural requirements. *Hickman v. State*, 153 S.W.3d 16, 21 (Tenn. 2004); *James M. Grant v. State*, No. M2006-01368-CCA-R3-HC, 2006 WL 2805208 (Tenn. Crim. App., at Nashville, Oct. 2, 2006), *no Tenn. R. App. P. 11 application filed*.

It is also permissible for a trial court to 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 convictions addressed therein are void. *See Passarella*, 891 S.W.2d at 627; *Rodney Buford v. State*, No. M1999-00487-CCA-R3-PC, 2000 WL 1131867, at *2 (Tenn. Crim. App., at Nashville, July 28, 2000), *perm. app. denied* (Tenn. Jan. 16, 2001). Because the determination of whether habeas corpus relief should be granted is a question of law, our review is de novo with no presumption of correctness. *Hart v. State*, 21 S.W.3d 901, 903 (Tenn. 2000).

In the case under submission, we conclude there the Petitioner presents no issues that indication that his judgment of conviction is void. The Petitioner first raises the issue of whether the "show-up" identification of him violated his due process rights. This Court has held that a conviction that results from a mistaken identification would not render the judgment of conviction void. *Bobby Lee v. Stephen Dotson, Warden*, No. W2007-02584-CCA-R3-HC, 2009 WL 482532, at *2 (Tenn. Crim. App., at Jackson, Feb. 24, 2009), *perm. app. denied* (Tenn. June 15, 2009). Similarly, the Petitioner's allegation that he was denied the opportunity to call a defense witness would not render his judgment void or show his sentence is expired. The Petitioner's contention that the State "waiv[ed]" its right to incarcerate him because there was a delay between when he was convicted and when the trial court signed the judgment of conviction does not entitle him to habeas corpus relief. As cited by the State, "It is well-settled that a trial judge's failure to sign a judgment does not give rise to a claim for relief under habeas corpus proceeding." *Arzolia Charles Goines v. Glen Turner, Warden*, No. E2004-00289-CCA-R3-HC, 2004 WL 2439291, at *2 (Tenn. Crim. App., at Knoxville, Nov. 1, 2004), *no Tenn. R. App. P. 11 application filed*. The Petitioner's two issues, regarding the length of his sentence and his pretrial jail credits, are not cognizable claims pursuant to habeas corpus. And, finally, he has not proven he is entitled to habeas corpus relief based upon the trial court's actions during his sentencing and "capias" hearings. Accordingly, we affirm the habeas corpus court's dismissal of the Petitioner's application for a writ of habeas corpus.

III. Conclusion

After a thorough review of the record before this Court, we conclude that the habeas corpus court did not err when it dismissed the Petitioner's application for a writ of habeas corpus relief.

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ROBERT W. WEDEMEYER, JUDGE