

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs June 23, 2009

**RENDELL COREY JONES v. JAMES T. FORTNER, WARDEN**

**Appeal from the Circuit Court for McMinn County  
No. 08-469 Amy A. Reedy, Judge**

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**No. E2009-00233-CCA-R3-HC - Filed October 20, 2009**

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The Petitioner, Rendell Corey Jones, appeals pro se from the McMinn County Circuit Court's summary dismissal of his petition for the writ of habeas corpus in which he contends that his sentences have expired and that he is entitled to immediate release. We affirm the judgment of the trial court.

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

JOSEPH M. TIPTON, P.J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and NORMA MCGEE OGLE, JJ., joined.

Rendell Corey Jones, Only, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; Leslie E. Price, Assistant Attorney General; and Robert Steve Bebb, District Attorney General, for the appellee, State of Tennessee.

**OPINION**

The Petitioner was convicted on November 14, 2000, on his guilty pleas to the following Sumner County offenses:

- (1) Facilitation of Aggravated Robbery, a Class C felony, five-year sentence to be served as one year of confinement and four years of community corrections consecutive to Count (3);
- (2) Facilitation of Aggravated Robbery, a Class C felony, six-year sentence to be served in the Department of Correction (DOC) consecutive to Count (3);
- (3) Aggravated Assault, a Class C felony, four-year sentence to be served in the DOC consecutive to Counts (1) and (2).

The Petitioner was convicted on his guilty pleas on October 12, 2005, of the following McMinn County offenses:

- (1) Statutory Rape, a Class E felony, three-year sentence to be served in the DOC consecutively to the Sumner County sentences in which he had violated parole;
- (2) Sexual Battery, a Class E felony, three-year sentence to be served in the DOC consecutively to the Sumner County sentences in which he had violated parole.

The Petitioner, who was incarcerated in Hickman County, filed a pro se petition for the writ of habeas corpus in McMinn County Circuit Court on December 29, 2008, in which he alleged that his sentences had expired and that he was being incarcerated illegally. He attached documents which purport to be Tennessee Offender Management Information System (TOMIS) printouts from the DOC reflecting his progress in completing his sentences. The Petitioner also alleged that should the trial court treat the petition as one for post-conviction relief, the statute of limitations should not be applied because his grounds for relief arose after the expiration of the limitations period. The trial court entered an order on January 12, 2009, dismissing the petition. The court found that “nothing on the face of the judgments of the record . . . [gave] rise for relief under a writ of habeas corpus in this jurisdiction” and that the petition neither raised a constitutional issue cognizable as a post-conviction matter nor alleged a proper basis for avoiding the post-conviction statute of limitations bar.

In this appeal, the Petitioner claims the trial court erred in denying habeas corpus relief, in dismissing his petition without appointing counsel and conducting a hearing, and in denying relief under the post-conviction statute. The State responds that the trial court correctly dismissed the petition. We agree with the State.

In Tennessee, the grounds upon which habeas corpus relief may be granted are very narrow. Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). The writ will issue only when the petitioner has established lack of jurisdiction for the order of confinement or that he is otherwise entitled to immediate release because of the expiration of his sentence. See Ussery v. Avery, 222 Tenn. 50, 432 S.W.2d 656 (1968); State ex rel. Wade v. Norvell, 1 Tenn. Crim. App. 447, 443 S.W.2d 839 (1969). The purpose of the habeas corpus petition is to contest a void, not merely a voidable, judgment. State ex rel Newsome v. Henderson, 424 S.W.2d 186, 189 (1969). A void, as opposed to a voidable, judgment is “one that is facially invalid because the court did not have the statutory authority to render such judgment.” See Summers v. State, 212 S.W.3d 251, 256 (Tenn. 2007). A petitioner bears the burden of establishing a void judgment or illegal confinement by a preponderance of the evidence. See Wyatt v. State, 24 S.W.3d 319, 322 (Tenn. 2000). A court may summarily dismiss a petition for habeas corpus relief, without the appointment of counsel and without an evidentiary hearing, if the petition does not state a cognizable claim. See Hickman v. State, 153 S.W.3d 16, 20 (Tenn. 2004).

The Petitioner argues that the trial court erred in dismissing the petition as not stating a claim for relief “in this jurisdiction.” He argues that the petition was properly filed in McMinn County, even though he was incarcerated in Hickman County, because McMinn County entered the judgments of conviction that were under attack.

The trial court's order dismissing the petition states that the judgments and the record "reflect nothing . . . that give[s] rise for relief under a writ of habeas corpus in this jurisdiction." We believe that this finding is ambiguous with respect to whether it addresses the venue in which the petition was filed.

The Code states, "The application should be made to the court or judge most convenient in point of distance to the applicant, unless a sufficient reason be given in the petition for not applying to such court or judge." T.C.A. § 29-21-105 (2000). However, this court has said that a habeas corpus petitioner states a sufficient basis for filing his petition in the county of conviction, rather than the court that is the closest point of distance, when his petition alleges that his sentence is illegal and that the records of the conviction are in the county in which the petition has been filed. Davis v. State, 261 S.W.3d 16 (Tenn. Crim. App. 2008), app. denied (Tenn. June 30, 2008). Whether the trial court intended this as a free-standing basis for dismissing the petition, any error was harmless because, as discussed below, the petition was properly dismissed on substantive grounds.

According to the judgment documents attached to the petition, the Petitioner was sentenced in November 2000 to an effective ten-year sentence, for which his parole was revoked. He was later sentenced to serve an additional three years consecutively to the 2000 sentences. On the face of the judgments, the Petitioner's sentences have not expired. Rather, it appears that the true nature of the Petitioner's complaint is with the DOC's calculation of sentencing credits.

A petitioner may seek relief from an illegal sentence through a petition for the writ of habeas corpus, the denial of which is appealable as of right. See generally T.C.A. §§ 29-21-101 to -130 (2000) (Habeas Corpus). However, disputes over sentence reduction credits which accrued during a petitioner's incarceration in the custody of the DOC are cognizable under the Administrative Procedures Act. Carroll v. Raney, 868 S.W.2d 721, 723 (Tenn. Crim. App. 1983) (holding that sentence time credits are internal matters of the DOC and are properly addressed through the Administrative Procedures Act). See generally T.C.A. §§ 4-5-101 to -325 (2005) (Uniform Administrative Procedures Act). We conclude that the trial court properly determined that the petition should be dismissed.

We consider next the Petitioner's claim that the trial court should have appointed counsel and conducted a hearing on the petition. As noted above, summary dismissal without the appointment of counsel and without an evidentiary hearing is appropriate if the petition does not state a cognizable claim. See Hickman, 153 S.W.3d at 20.

Finally, we consider the Petitioner's complaint that the trial court erred in failing to consider his petition as one for post-conviction relief and allow tolling of the post-conviction statute of limitations. Post-conviction relief is available "when the conviction or sentence is void or voidable because of the abridgement of any right guaranteed by the Constitution of Tennessee or the Constitution of the United States." T.C.A. § 40-30-103 (2006). A complaint of improper sentence calculation does not fall within this category. As stated above, the proper redress in such a situation is through the Administrative Procedures Act. Thus, post-conviction relief was not available, without regard to tolling of the statute of limitations.

In consideration of the foregoing and the record as a whole, the judgment of the trial court is affirmed.

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JOSEPH M. TIPTON, PRESIDING JUDGE