

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned On Briefs February 3, 2016

**JOHN E. CARTER v. HERBERT H. SLATERY III, IN HIS OFFICIAL
CAPACITY AS ATTORNEY GENERAL AND REPORTER**

**Direct Appeal from the Chancery Court for Davidson County
No. 14-309-II Carol L. McCoy, Chancellor**

No. M2015-00554-COA-R3-CV – Filed February 19, 2016

The appellant is an inmate serving consecutive life sentences for first-degree murder. After filing numerous unsuccessful petitions for post-conviction, habeas corpus, and/or coram nobis relief, before state and federal courts, he instituted this lawsuit by filing a petition for declaratory judgment in the chancery court of Davidson County. The inmate asked the chancery court to declare that he has a federal due process right to have his 1982 first-degree murder convictions “tested” against the Tennessee Supreme Court’s subsequent interpretation of Tennessee’s statute defining first-degree murder. The inmate also sought a declaration that he had been denied due process by application of the various criminal statutes that were cited in his previous cases to support dismissal of his petitions for post-conviction, habeas corpus, and coram nobis relief. The attorney general, as respondent, moved to dismiss this chancery court action for lack of subject matter jurisdiction. The chancery court concluded that it possessed subject matter jurisdiction to issue a declaratory judgment as to these issues, but it nevertheless dismissed the petition, *sua sponte*, on the basis of collateral estoppel. The inmate appeals the dismissal of his petition. The attorney general challenges the subject matter jurisdiction of the chancery court. We conclude that the chancery court lacked subject matter jurisdiction and therefore affirm, as modified, the trial court’s order dismissing the petition.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed
as Modified and Remanded**

BRANDON O. GIBSON, J., delivered the opinion of the court, in which J. STEVEN STAFFORD, P.J., W.S., and KENNY ARMSTRONG, J., joined.

John E. Carter, Mountain City, Tennessee, *Pro se*.

Herbert H. Slatery III, Attorney General and Reporter, Andrée S. Blumstein, Solicitor General and Brooke K. Schiferle, Assistant Attorney General, for the appellee, Attorney General and Reporter.

OPINION

I. FACTS & PROCEDURAL HISTORY

In 1981, John E. Carter was indicted on two counts of first-degree murder in violation of Tennessee Code Annotated section 39-2402. The victims were Carter's grandparents. According to his brief on appeal, Carter admits that he took the lives of his grandparents, but he maintains that he did not act with premeditation or deliberation to warrant a conviction for first-degree murder.

Following a jury trial in 1982, Carter was convicted of two counts of first-degree murder. He was sentenced to two consecutive terms of life-imprisonment on April 4, 1983. Carter's convictions and sentence were upheld on appeal. *See State v. Carter*, 1985 Tenn. Crim. App. LEXIS 3028 (Tenn. Crim. App. Feb. 20, 1985), *perm. app. denied* (Tenn. July 2, 1990). He filed a petition for post-conviction relief, which was denied after an evidentiary hearing, and dismissal was affirmed on appeal. *See Carter v. State*, No. 89-27-III, 1990 WL 9892 (Tenn. Crim. App. Feb. 9, 1990), *perm. app. denied* (Tenn. July 2, 1990).

In 1992, in *State v. Brown*, 836 S.W.2d 530, 543 (Tenn. 1992), the Tennessee Supreme Court examined the first-degree murder statute and clarified the concepts of premeditation and deliberation. Thereafter, Carter instituted numerous proceedings in which he argued that he was entitled to relief based on *Brown*. *See Carter v. Carlton*, No. E2000-00406-CCA-R3-PC, 2001 WL 170878, at *3 (Tenn. Crim. App. Feb. 22, 2001) (affirming dismissal of his petition for habeas corpus relief, "we do not conclude that an individual convicted of first degree murder pre-*Brown* is laboring under a void conviction"), *perm. app. denied* (Tenn. July 2, 2001), *reh'g denied* (Tenn. Sept. 17, 2001) *cert. denied* (U.S. Nov. 13, 2001)¹; *Carter v. State*, No. M2003-00750-CCA-R28-CO (Tenn. Crim. App. Jun. 9, 2003) (affirming dismissal of his fourth motion to reopen his petition for post-conviction relief, in which he claimed innocence based on *Brown*, because the argument was not the type of claim that could be raised in a motion to reopen), *perm. app. denied* (Tenn. Oct. 27, 2003); *Carter v. State*, No. E2005-01296-CCA-R3-HC, 2005 WL 2487977 (Tenn. Crim. App. Oct. 7, 2005) (construing his untitled pleading as one for habeas corpus relief and concluding that his claim of

¹The denial of Carter's federal habeas corpus petition was also affirmed on appeal. *Carter v. Rone*, 12 F.3d 211 (Table), 1993 WL 498200 (6th Cir. 1993), *cert. denied* (U.S. Apr. 18, 1994).

improper interpretation of law did not present a cognizable claim for habeas corpus relief),² *perm. app. denied* (Tenn. Jan. 30, 2006), *cert. denied* (U.S. June 26, 2006); *Carter v. State*, No. M2004-03073-CCA-R3-CO, 2006 WL 119673 (Tenn. Crim. App. Jan. 17, 2006) (affirming summary dismissal of his three petitions for writ of error coram nobis as untimely and because the *Brown* issue was previously addressed in his post-conviction proceeding), *perm. app. denied* (Tenn. May 30, 2006), *cert. denied* (U.S. Oct. 2, 2006); *Carter v. Taylor*, No. E2014-01065-CCA-R3-HC, 2015 WL 2448029 (Tenn. Crim. App. May 22, 2015) (affirming dismissal of his petition for writ of habeas corpus for procedural deficiencies and because it failed to state a cognizable claim for habeas corpus relief), *perm. app. denied* (Tenn. Oct. 15, 2015).

Carter instituted the present action in 2014 by filing a petition for declaratory judgment in the chancery court of Davidson County.³ He named the Tennessee Attorney General as the respondent. Based on *Fiore v. White*, 531 U.S. 225 (2001), Carter argued that he had a due process right to have state law as interpreted in *Brown* applied to his case and to have his “wrongful conviction vacated.” He asserted that *Fiore* and the due process clause “mandate a postconviction remedy” by which he can “have his criminal judgments tested” against *Brown*. His petition noted that his previous petitions for post-conviction, habeas corpus, and coram nobis relief were all denied or dismissed. Carter asked the chancery court to enter a declaratory judgment that he has a due process right to have *Brown* applied in order to test his final judgments. He also sought declarations that each of the criminal statutes that served as the basis for dismissal in his previous cases had violated his due process rights. Specifically, he sought declaratory judgments regarding the various courts’ applications of Tennessee Code Annotated sections 40-30-102(c) (regarding post-conviction relief); 40-30-117(a) (motions to reopen post-conviction petitions); 29-21-101(a) (writ of habeas corpus); 27-7-103 (writ of error coram nobis); and 40-26-105 (same).

The Attorney General filed a motion to dismiss the petition for declaratory judgment, asserting that a court of equity lacks jurisdiction over the subject matter of the issues raised by Carter. The Attorney General suggested that Carter was seeking to

²As of 2005, the Court of Criminal Appeals noted that Carter had “unsuccessfully challenged his convictions in ‘at least eleven (11) separate proceedings’ through the filing of petitions for habeas corpus, coram nobis, and/or post-conviction relief, including multiple motions to reopen his post-conviction petition, all raising variations of the claims he presents here.” *Carter*, 2005 WL 2487977, at *1.

³We note that Carter’s *pro se* petition for a declaratory judgment cited Tennessee Code Annotated section 4-5-225, which addresses declaratory judgments in the context of the Uniform Administrative Procedures Act (UAPA). However, both the Attorney General and Carter analyzed the Tennessee Declaratory Judgment Act, Tenn. Code Ann. § 29-14-101, et seq., in their subsequent filings in the trial court, and neither raised any argument regarding the UAPA in the trial court or on appeal. As a result, we have not analyzed the UAPA provisions in this opinion.

transform the chancery court “into a *de facto* Court of Criminal Appeals by asking the Court to review a question of criminal law that has been answered repeatedly in the Petitioner’s prior litigation.” The Attorney General argued that Tennessee’s criminal and circuit courts have exclusive original jurisdiction of criminal cases, citing Tenn. Code Ann. §§ 16-10-102, 40-1-108, and therefore the chancery court lacked subject matter jurisdiction to issue a declaratory judgment regarding criminal matters.

In response, Carter acknowledged that the chancery court lacked jurisdiction to vacate his convictions or to issue injunctive relief regarding the enforcement of the criminal statutes he challenged. However, he insisted that the chancery court was authorized to issue the declarations he sought pursuant to the Declaratory Judgments Act, even in the absence of authority to issue injunctive relief. Carter envisioned that a declaratory judgment from the chancery court could “ultimately lead a court with appropriate jurisdiction to invalid[ate] his convictions.”

On November 19, 2014, the chancery court entered an order dismissing Carter’s petition for a declaratory judgment. The chancery court noted that Tennessee Code Annotated section 16-10-102 grants exclusive jurisdiction over criminal cases to circuit courts, except in counties that have established criminal courts. The chancery court also recognized that the chancery courts of this state have no jurisdiction, inherent or statutory, to enjoin threatened criminal prosecutions. *See Tennessee Downs, Inc. v. Gibbons*, 15 S.W.3d 843, 847 (Tenn. Ct. App. 1999) (“It is a well-established rule of equity jurisprudence that courts of equity have no jurisdiction to enjoin the enforcement of state criminal laws.”). However, the chancery court also correctly noted that “the Tennessee Court of Appeals has held that the Chancery Court has subject matter jurisdiction over a petition for declaratory judgment regarding the constitutionality of a criminal statute as applied to a petitioner.” *See Blackwell v. Haslam*, No. M2011-00588-COA-R3-CV, 2012 WL 113655 (Tenn. Ct. App. Jan. 11, 2012), *perm. app. denied* (Tenn. Apr. 11, 2012). “Based on *Blackwell*,” the chancery court concluded that it had subject matter jurisdiction to issue a declaratory judgment regarding Carter’s claims. Ultimately, however, the chancery court concluded that Carter’s claims were “merely an end run around the Court of Criminal Appeals’ denial of his petition for habeas corpus relief,” and therefore, the chancery court dismissed the petition *sua sponte* on the basis of collateral estoppel. After the denial of a post-trial motion, Carter timely filed a notice of appeal.

II. ISSUES PRESENTED

Carter presents three issues, which we have restated, for review on appeal:

1. Whether the denial of Carter’s habeas corpus petition serves as a bar

to his request for declaratory judgment under the doctrine of collateral estoppel;

2. Whether *Fiore* and the due process clause grant Carter a right to have his convictions tested against the Tennessee Supreme Court's interpretation of the first-degree murder statute in *Brown*; and

3. Whether the Tennessee statutes that were applied to dismiss his previous petitions for relief violate his due process rights under *Fiore*.

In his posture as appellee, the Attorney General presents the following additional issue:

4. Whether the chancery court properly dismissed Carter's petition for declaratory judgment because the chancery court lacked jurisdiction to consider his challenge to the legality of the criminal judgments against him.

For the following reasons, we agree with the trial court that this case should be dismissed, but we reach that conclusion on different grounds. "We are empowered on appeal to sustain the trial court's order if it reached the correct result for the wrong reasons." *In re Conservatorship for Allen*, No. E2010-01625-COA-R10-CV, 2010 WL 5549037, at *8 (Tenn. Ct. App. Dec. 29, 2010); *see also Robinson v. Currey*, 153 S.W.3d 32, 40 (Tenn. Ct. App. 2004) (quoting *Shutt v. Blount*, 249 S.W.2d 904, 907 (Tenn. 1952) ("[I]f the Trial Judge reached the right result for the wrong reason, there is no reversible error.")). The judgment of the trial court is vacated to the extent the trial court concluded that it had subject matter jurisdiction over the petition. The judgment of the trial court dismissing the petition is affirmed as so modified and remanded for further proceedings.

III. STANDARD OF REVIEW

The issue on appeal involves the subject matter jurisdiction of the chancery court. Subject matter jurisdiction presents a question of law, which we review *de novo* without affording the trial court's decision a presumption of correctness. *In re Baby*, 447 S.W.3d 807, 817 (Tenn. 2014) (citing *Chapman v. DaVita, Inc.*, 380 S.W.3d 710, 712-13 (Tenn. 2012)). The concept of subject matter jurisdiction refers to a court's authority to adjudicate a particular case or controversy. *Id.*

The existence of subject matter jurisdiction "depends on the nature of the cause of action and the relief sought." *In re Baby*, 447 S.W.3d at 837 (quoting *Chapman*, 380 S.W.3d at 712). A court has subject matter jurisdiction only when conferred by a statute or a provision of the state or federal constitution. *Id.* (citing *Northland Ins. Co. v. State*, 33 S.W.3d 727, 729 (Tenn. 2000)). When a court's subject matter jurisdiction is

questioned, the first step is to ascertain the nature or gravamen of the case. *Staats v. McKinnon*, 206 S.W.3d 532, 542 (Tenn. Ct. App. 2006) (citing *Newsome v. White*, No. M2001-03014-COA-R3-CV, 2003 WL 22994288, at *2 (Tenn. Ct. App. Dec. 22, 2003)). Then, the court must determine whether the constitution, the general assembly, or the common law have conferred on it the power to adjudicate cases of that sort. *Id.* (citing *Newsome*, 2003 WL 22994288, at *2; *Levy v. Bd. of Zoning Appeals*, No. M1999-00126-COA-R3-CV, 2001 WL 1141351, at *3 (Tenn. Ct. App. Sept. 27, 2001)).

IV. DISCUSSION

Subject matter jurisdiction is viewed as a threshold inquiry. *Redwing v. Catholic Bishop for Diocese of Memphis*, 363 S.W.3d 436, 445 (Tenn. 2012). Accordingly, we begin with the Attorney General's assertion that the chancery court lacked subject matter jurisdiction to issue a declaratory judgment on Carter's challenges to the legality of the criminal judgments against him.

As noted above, Tennessee Code Annotated section 16-10-102 provides that "[t]he circuit court has exclusive original jurisdiction of all crimes and misdemeanors, either at common law or by statute, unless otherwise expressly provided by statute or this code." Tennessee Code Annotated section 40-1-108 further provides that "[t]he circuit and criminal courts have original jurisdiction of all criminal matters not exclusively conferred by law on some other tribunal." Consequently, "the Tennessee General Assembly has vested exclusive and original jurisdiction of all criminal matters in the circuit and criminal courts of this state." *Tennessee Downs, Inc.*, 15 S.W.3d at 848 (citing Tenn. Code Ann. §§ 16-10-102, 40-1-107 to 108). Over a century ago, the Tennessee Supreme Court recognized that "[c]ourts of equity are not constituted to deal with crime and criminal proceedings." *J.W. Kelly & Co. v. Conner*, 123 S.W. 622, 635 (Tenn. 1909). The court explained:

The rule which prevents a court of chancery from interfering with the administration of the criminal laws of this state is a wise one, founded upon sound principles of public policy, and, if we had the power to do so, we fear that changing it would result in much confusion and embarrassment in preserving peace and order, and enforcing the police power of the state generally, which would outweigh the good that would follow an immediate decision of this case upon the merits. The injury to the general public, which would ultimately result from the exercise of this jurisdiction, would be greater than that to individuals when left to their remedies in courts of law.

Id. at 637.

More recently, in *Clinton Books, Inc. v. City of Memphis*, 197 S.W.3d 749 (Tenn. 2006), the Tennessee Supreme Court considered whether a court of equity had subject matter jurisdiction to issue a temporary injunction barring enforcement of a criminal statute. The court concluded that a court of equity did not possess such jurisdiction:

The long-standing rule in Tennessee is that state courts of equity lack jurisdiction to enjoin the enforcement of a criminal statute that is alleged to be unconstitutional. *See, e.g., Alexander v. Elkins*, 132 Tenn. 663, 179 S.W. 310, 311 (1915); *J.W. Kelly & Co. v. Conner*, 122 Tenn. 339, 123 S.W. 622, 637 (1909). A lawsuit seeking injunctive relief due to an allegedly invalid criminal statute asks the chancery court, rather than the court that will enforce the criminal law, to enjoin the officers of the state from prosecuting persons who are conducting a business made unlawful by a criminal statute until the chancery court can determine the statute's validity. *J.W. Kelly & Co.*, 123 S.W. at 631. Permitting a court of equity to interfere with the administration of this state's criminal laws, which that court is without jurisdiction to enforce, would cause confusion in the preservation of peace and order and the enforcement of the State's general police power. *Id.* at 637.

Clinton Books, 197 S.W.3d at 752. The supreme court noted that a court of equity *may* enjoin the enforcement of a criminal statute that *the supreme court* has adjudged unconstitutional. *Id.* at 753. In that situation, the court explained, a person is not subject to criminal prosecution for acts committed in violation of the statute, no controversies are required to be settled by the criminal court, "and the equity court is not invading the criminal court's jurisdiction by issuing an injunction." *Id.* The general rule, however, is that courts of equity lack jurisdiction to enjoin the enforcement of a criminal statute. *Id.* at 754.

The plaintiffs in *Clinton Books* argued that some recent decisions from the Tennessee Supreme Court suggested that courts of equity do have subject matter jurisdiction to enjoin enforcement of a criminal statute. For example, in *Davis-Kidd Booksellers, Inc. v. McWherter*, 866 S.W.2d 520, 523 (Tenn. 1993), the plaintiffs sought injunctive and declaratory relief in chancery court when challenging the constitutionality of statutes that provided for criminal penalties. On appeal, the supreme court considered the constitutionality of the statutes without addressing whether the chancery court had

subject matter jurisdiction to grant injunctive relief. In *Clinton Books*, however, the supreme court rejected the argument that these cases altered the law regarding subject matter jurisdiction of courts of equity. *Clinton Books*, 197 S.W.3d at 752. The supreme court explained that stare decisis only applies to decisions directly on the point in controversy. *Id.* at 753. “Accordingly,” the court continued, “the omission of any discussion of the trial court’s [subject matter] jurisdiction in [] *Davis-Kidd* should not be interpreted as altering the general rule prohibiting state equity courts from enjoining enforcement of a criminal statute.” *Id.*

In sum, according to *Clinton Books*, the “general rule” is that “a court of equity may not enjoin enforcement of a criminal statute.” *Id.* at 754. The question that remains is whether the chancery court can issue a declaratory judgment regarding the enforcement of a criminal statute or judgment, even in the absence of authority to issue injunctive relief.

In general, chancery courts have subject matter jurisdiction to adjudicate declaratory judgment actions. *Estate of Brown*, 402 S.W.3d 193, 199 (Tenn. 2013) (citing Tenn. Code Ann. § 29-14-102). Tennessee’s Declaratory Judgment Act “conveys the power to construe or determine the validity of any written instrument, statute, ordinance, contract, or franchise, *provided that the case is within the court’s jurisdiction.*” *Colonial Pipeline Co. v. Morgan*, 263 S.W.3d 827, 837 (Tenn. 2008) (citing Tenn. Code Ann. § 29-14-103) (emphasis added). However, “[t]he Declaratory Judgment Act does not grant the power to courts to declare and enforce rights outside their scope of jurisdiction.” *Morgan v. Norris*, No. 88-70-II, 1988 WL 133479, at *2 (Tenn. Ct. App. Dec. 16, 1988) (citing *Zirkle v. City of Kingston*, 217 Tenn. 210, 396 S.W.2d 356 (1976); *Hill v. Beeler*, 199 Tenn. 325, 286 S.W.2d 868 (1956); *Nicholson v. Cummings*, 188 Tenn. 201, 217 S.W.2d 942 (1949)); *see also* Tenn. Code Ann. § 29-14-102(a) (“Courts of record *within their respective jurisdictions* have the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.”) (emphasis added).

As noted in 26 C.J.S. *Declaratory Judgments* § 124:

The declaratory-judgment statutes give to courts of record the power to declare rights, status and other legal relations within their respective jurisdictions, but do not confer subject matter jurisdiction. A declaratory judgment act is not an express independent source of subject matter jurisdiction, and ordinarily does not by itself grant or otherwise create jurisdiction. In order that a court have jurisdiction to render a declaratory

judgment over any subject matter, jurisdiction must exist independent of the declaratory judgment statute. . . .

A litigant's request for declaratory relief does not alter a suit's underlying nature. Declaratory judgment actions are subject to the same limitations inherent in the underlying cause of action from which the controversy arose. Statutory authority to award a declaratory judgment does not permit litigants to raise such claims, by their own "bootstraps," if jurisdiction is otherwise lacking.

Statutes authorizing declaratory judgments merely extend the power of the courts to grant relief in cases that are already within their jurisdiction. Such statutes, therefore, do not confer any additional jurisdiction on the courts, or modify its jurisdictional reach over the parties or the subject matter.

For example, "[t]he Federal Declaratory Judgment Act does not confer independent jurisdiction but merely provides additional remedies where jurisdiction already exists. The plaintiff must establish an independent source of subject matter jurisdiction in order to proceed to pursue declaratory relief in a federal court." 22A Am. Jur. 2d *Declaratory Judgments* § 188.

Likewise, in Tennessee, our supreme court has held that "the Declaratory Judgment Act has not given the courts jurisdiction over any controversy that would not be within their jurisdiction if affirmative relief were being sought." *Hill*, 286 S.W.2d at 871. Simply put, "the Declaratory Judgment Act does not confer an independent basis for jurisdiction." *Batts v. Lack*, No. 86-147-II, 1986 WL 13040, at *3 (Tenn. Ct. App. Nov. 21, 1986) (citing *Hill*, 286 S.W.2d at 871). Consequently, the Tennessee Supreme Court has held that "[a] declaratory judgment is proper in chancery, but only if chancery originally could have entertained a suit of the same subject matter." *Zirkle*, 396 S.W.2d at 363 (citing *Gibson, Suits in Chancery* § 36, n.62 (5th ed. 1955)). In *Zirkle*, for instance, the supreme court concluded that the chancery court did not have jurisdiction over any of the theories alleged in the complainants' suit, and therefore, it could not "take jurisdiction to enter a declaratory judgment." *Id.*

In the case before us, the chancery court relied on *Blackwell v. Haslam*, No. M2011-00588-00A-R3-CV, 2012 WL 113655 (Tenn. Ct. App. Jan. 11, 2012), *perm. app. denied* (Tenn. Apr. 11, 2012), as recognizing chancery court jurisdiction over a petition for declaratory judgment regarding the constitutionality of a criminal statute. Specifically, in *Blackwell*, the Middle Section of this Court held that a chancery court had

subject matter jurisdiction over a complaint for declaratory relief regarding the constitutionality of a statute imposing criminal penalties even though the chancery court lacked jurisdiction to enjoin the enforcement of the same statute. *Id.* at *6. The *Blackwell* court recognized that chancery courts of Tennessee do not have original jurisdiction over criminal cases. *Id.* at *3. The court then acknowledged but declined to follow the Tennessee Supreme Court’s holding in *Zirkle* that “[a] declaratory judgment is proper in chancery, but only if chancery originally could have entertained a suit of the same subject matter.” *Id.* at *5. The *Blackwell* court conceded that the supreme court had not explicitly overruled *Zirkle*, but, nevertheless, it concluded that the supreme court had “clearly departed from the unequivocal declaration” in *Zirkle* in two subsequent cases: *Davis-Kidd Booksellers*, 866 S.W.2d at 520, and *Clinton Books*, 197 S.W.3d at 749. *Blackwell*, 2012 WL 113655 at *5. The Middle Section emphasized that those two cases involved requests for declaratory relief regarding statutes that assessed criminal penalties, “and in none of these cases did the court find that the chancery court lacked subject matter jurisdiction.” *Id.* at *5.

This Court disagreed with the *Blackwell* decision in *Memphis Bonding Co., Inc. v. Criminal Court of Tennessee 30th Dist.*, No. W2015-00562-COA-R10-CV, 2015 WL 7575093, at *7 (Tenn. Ct. App. Nov. 25, 2015). We noted that neither *Davis-Kidd* nor *Clinton Books* contained any discussion regarding a chancery court’s subject matter jurisdiction over a request for declaratory relief. In *Clinton Books*, the supreme court remanded a request for declaratory relief due to a procedural issue but did not discuss the issue of subject matter jurisdiction as it pertained to declaratory relief. Moreover, as previously noted in this opinion, the *Clinton Books* court acknowledged the lack of any discussion of subject matter jurisdiction in *Davis-Kidd* and specifically cautioned that “the omission of any discussion of the trial court’s jurisdiction in [] *Davis-Kidd* should not be interpreted as altering the general rule prohibiting state equity courts from enjoining enforcement of a criminal statute.” *Clinton Books*, 197 S.W.3d at 753. In other words, we should not assume that subject matter jurisdiction existed based on the fact that the issue was not addressed in the opinion. This seems to be the same approach the court of appeals used in *Blackwell*. We respectfully disagree with its conclusion that the supreme court “clearly departed from the unequivocal declaration” in *Zirkle* by its silence on the issue in *Davis-Kidd* and *Clinton Books*. We consider the supreme court’s unequivocal statements in *Zirkle* and *Hill* to be controlling.

According to *Hill*, “the Declaratory Judgment Act has not given the courts jurisdiction over any controversy that would not be within their jurisdiction if affirmative relief were being sought.” *Hill*, 286 S.W.2d at 871. *Zirkle* specifically holds that “[a] declaratory judgment is proper in chancery [] only if chancery originally could have entertained a suit of the same subject matter.” *Zirkle*, 396 S.W.2d at 363. As a result, we

conclude that the chancery court lacked subject matter jurisdiction to enter a declaratory judgment regarding the legality or constitutionality of the criminal judgments entered against Carter.

We express no opinion regarding whether Carter is entitled to a “postconviction remedy” pursuant to *Fiore*, as he claims. We simply hold that he is not entitled to bring a declaratory judgment action in chancery court to resolve these issues.

V. CONCLUSION

For the aforementioned reasons, the decision of the chancery court is hereby affirmed as modified and remanded for further proceedings. Costs of this appeal are taxed to the appellant, John E. Carter. Because John E. Carter is proceeding *in forma pauperis* in this appeal, execution may issue for costs if necessary.

BRANDON O. GIBSON, JUDGE