

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs May 2, 2018

FILED
07/02/2018
Clerk of the
Appellate Courts

STATE OF TENNESSEE v. MARCUS LATRAIL EASLEY

**Appeal from the Circuit Court for Weakley County
Nos. 2015-CR-72, 2014-CR-29 Jeff Parham, Judge**

No. W2017-01241-CCA-R3-CD

The defendant, Marcus Latrail Easley, appeals from the Weakley County Circuit Court's denial of his Tennessee Rule of Criminal Procedure 36.1 motion to correct an illegal sentence. Discerning no error, we affirm the judgment of the trial court.

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

J. ROSS DYER, J., delivered the opinion of the court, in which ALAN E. GLENN and TIMOTHY L. EASTER, JJ., joined.

Marcus Latrail Easley, Clifton, Tennessee, Pro Se.

Herbert H. Slatery III, Attorney General and Reporter; Courtney N. Orr, Assistant Attorney General; Tommy A. Thomas, District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTS

On May 5, 2015, the defendant was indicted for one count of second degree murder, two counts of attempted second degree murder, and four counts of aggravated assault for crimes committed against four victims. On September 14, 2015, the defendant pled guilty to one count of second degree murder against Corey Williams and two counts of attempted second degree murder against Trista Canady and Aquincy Dickson.¹ The trial court sentenced the defendant as a Range I, standard offender, and imposed an effective sentence of twenty-five years. Specifically, the trial court sentenced the defendant to twenty-five years for the second degree murder to be served at 100%. For

¹ The defendant's remaining charges were dismissed.

each attempted second degree murder conviction, the trial court imposed sentences of twelve years to be served at 30%. The trial court ordered the defendant's sentences to be served concurrently.

The defendant filed a petition for post-conviction relief on August 12, 2016. On December 28, 2016, the post-conviction court dismissed the petition with prejudice at the defendant's request. Subsequently, the defendant filed a *pro se* motion to correct an illegal sentence pursuant to Rule 36.1 of the Tennessee Rules of Criminal Procedure. In the motion, the defendant generally alleged that his guilty plea was not knowing or voluntary, that he is "actually innocent" of attempted second degree murder and insufficient evidence exists for the same, that his indictment violates double jeopardy and his convictions violate Tennessee Code Annotated section 39-12-106,² that he received ineffective assistance of counsel, and that his sentences are illegal. The trial court summarily dismissed the motion, finding the defendant failed to state a colorable claim. This timely appeal followed.³

ANALYSIS

On appeal, the defendant claims the trial court erred in denying his Rule 36.1 motion to correct an illegal sentence, setting forth the same issues presented in his motion. The State contends the defendant has not demonstrated a colorable claim for Rule 36.1 relief as he has failed to allege fatal errors in sentencing. Upon our review, we agree with the State.

Whether a motion states a colorable claim for correction of an illegal sentence under Rule 36.1 is a question of law calling for de novo review. *State v. Wooden*, 478 S.W.3d 585, 589 (Tenn. 2015). Rule 36.1 provides that the defendant "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." Tenn. R. Crim. P. 36.1(a). A sentence is illegal if it is "not authorized by the applicable statutes or . . . directly contravenes an applicable statute." *Id.* If the motion states a colorable claim, the trial court shall appoint counsel if the defendant is indigent and not already represented by counsel and hold a hearing on the motion, unless the parties waive the hearing. Tenn. R. Crim. P. 36.1(b). A "'colorable claim' means a claim that, if taken as true and viewed in

²Tennessee Code Annotated section 39-12-106 provides: "A person may not be convicted of more than one (1) of the offenses of criminal attempt, solicitation or conspiracy for conduct designed to commit or to culminate in the commission of the same offense." Tenn. Code Ann. § 39-12-106(a).

³On August 10, 2017, the defendant filed an "Ex Parte Injunction and/or Show Cause Order" seeking relief from his convictions under Rule 60.02 of the Tennessee Rules of Civil Procedure. The defendant alleged his convictions are invalid because they were not file stamped upon entry. The trial court dismissed the defendant's motion by order on August 14, 2017.

a light most favorable to the moving party, would entitle the moving party to relief under Rule 36.1.” *Wooden*, 478 S.W.3d at 593.

“[F]ew sentencing errors render [a sentence] illegal.” *Id.* at 595. Rather, sentencing errors may be clerical, appealable, or fatal, and only fatal errors render a sentence illegal. *Id.* Clerical errors “‘arise simply from a clerical mistake in filling out the uniform judgment document’ and may be corrected at any time under Tennessee Rule of Criminal Procedure 36.” *Id.* at 595 (quoting *Cantrell v. Easterling*, 346 S.W.3d 445, 449 (Tenn. 2011)). Appealable errors are “‘those errors for which the Sentencing Act specifically provides a right of direct appeal’” and are generally attacks on the methodology used by the trial court when imposing a sentence. *Id.* Fatal errors are those errors “so profound as to render the sentence illegal and void” and include “sentences imposed pursuant to an inapplicable statutory scheme, sentences designating release eligibility dates where early release is statutorily prohibited, sentences that are ordered to be served concurrently where statutorily required to be served consecutively, and sentences not authorized by any statute for the offense.” *Id.* (citing *Davis v. State*, 313 S.W.3d 751, 759 (Tenn. 2010)).

Presently, the defendant attacks the legality of his sentences by arguing the trial court improperly sentenced him as a violent offender and by challenging his underlying convictions in various ways. In support of his claims, the defendant asserts “dual convictions for second-degree murder and attempt to commit second-degree murder are prohibited by statute” and “the evidence fails to indicate [he] knew he intended to murder the victims.” Further, the defendant asserts the trial court relied in error on a prior conviction for the sale of a controlled substance in finding him to be a violent offender. Our review of the record, however, indicates the defendant’s convictions are valid and the trial court properly sentenced the defendant as a standard offender for the same. The defendant is not entitled to relief.

As noted above, on September 14, 2015, the defendant pled guilty to second degree murder for the death of Corey Williams, and to separate counts of attempted second degree murder against victims Trista Canady and Aquincy Dickson. The trial court sentenced the defendant as a standard offender for his three convictions. In doing so, the trial court imposed within-range sentences for each conviction, resulting in an effective twenty-five-year sentence. Tenn. Code Ann. § 40-35-112(a)(1), (2). Specifically, the trial court ordered the twelve-year sentences imposed for each attempted second degree murder conviction to be served concurrently to the twenty-five-year sentence imposed for the defendant’s second degree murder conviction. As noted on the judgment form, the trial court ordered the defendant’s twenty-five-year sentence to be served at 100% as required by Tennessee Code Annotated section 40-35-501(i). The

defendant has failed to show how his sentences violate any statute or render him eligible for relief under Rule 36.1. *Id.*

The defendant's remaining claims are inappropriate for relief under Rule 36.1 as his arguments do not raise a fatal issue in sentencing. Rather, the defendant alleges insufficient evidence exists to support his convictions, which he claims violate double jeopardy and Tennessee Code Annotated section 39-12-106, and further asserts his guilty plea was involuntary and unknowing. These allegations fail to demonstrate how his sentences are illegal as it is clear the defendant is challenging his underlying convictions and the entry of his guilty plea, rather than the legality of his sentences as permitted under Rule 36.1. Tenn. R. Crim. P. 36.1; *see State v. Marcus Thomas*, No. W2017-00692-CCA-R3-CD, 2017 WL 5634250, at *1 (Tenn. Crim. App. Nov. 22, 2017). The defendant is not entitled to relief.

Finally, within the present appeal, the defendant also argues he received ineffective assistance of counsel. In denying the defendant's Rule 36.1 motion, the trial court noted the defendant voluntarily dismissed his post-conviction petition, and he is not entitled to further relief as a result. We agree, and also note claims regarding ineffective assistance of counsel are not contemplated under Rule 36.1. Tenn. R. Crim. P. 36.1. The defendant is not entitled to relief.

CONCLUSION

Based on the foregoing, we affirm the judgment of the trial court.

J. ROSS DYER, JUDGE