

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT JACKSON  
Assigned on Briefs March 13, 2018

FILED

06/29/2018

Clerk of the  
Appellate Courts

**KENNETH O. WILLIAMS v. GRADY PERRY, WARDEN**

**Appeal from the Circuit Court for Hardeman County**  
**No. 17-CR-113      Joe H. Walker, III, Judge**

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**No. W2017-01713-CCA-R3-HC**

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The pro se Petitioner, Kenneth O. Williams, appeals the summary dismissal of his petition for writ of habeas corpus. Following our review, we affirm the dismissal of the petition.

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

ALAN E. GLENN, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and TIMOTHY L. EASTER, JJ., joined.

Kenneth O. Williams, Whiteville, Tennessee, Pro Se.

Herbert H. Slatery III, Attorney General and Reporter; and Robert W. Wilson, Assistant Attorney General, for the appellee, State of Tennessee.

**OPINION**

**FACTS**

The Petitioner was charged with first-degree murder in April 2004. Kenneth Williams v. State, No. W2007-01876-CCA-R3-PC, 2008 WL 5058007, at \*1 (Tenn. Crim. App. Dec. 1, 2008), perm. app. denied (Tenn. Apr. 27, 2009). On the day of trial, May 16, 2005, the Petitioner agreed to plead guilty to second-degree murder in exchange for a sentence of thirty years as a violent offender. Id. During the plea colloquy, the Petitioner was told that he would be required to serve 100% of his sentence in confinement, and he subsequently expressed a desire to go to trial. Id. at \*1-2. However, before the jury was seated, the Petitioner changed his mind and ultimately entered a guilty plea following an “extensive” plea colloquy. Id. at \*3. On the judgment form, the

trial court marked the Petitioner's release eligibility of "Violent 100%" but did not mark the Petitioner's offender status.

Thereafter, the Petitioner filed a petition for post-conviction relief, in which he argued that his guilty plea was not knowingly and voluntarily entered. Id. at \*1. At the evidentiary hearing, he testified that "he understood that the sentence for second[-]degree murder was thirty years, but he later learned that the sentencing range was fifteen to twenty-five years for a standard Range I offender." Id. at \*2. The post-conviction court concluded that the Petitioner's plea was knowingly and voluntarily entered, and this court affirmed the post-conviction court's judgment on direct appeal. Id. at \*1 and \*3.

The Petitioner filed two motions to correct an illegal sentence pursuant to Tennessee Rule of Criminal Procedure 36.1, one on June 28, 2016 and another on July 27, 2017. The trial court denied the first motion because the Petitioner only alleged that his plea was unknowing and involuntary and not that it was illegal. The trial court denied the second motion, finding that the Petitioner did not state a colorable claim that his sentence was illegal.

On August 8, 2017, the Petitioner filed a petition for writ of habeas corpus. In his petition, the Petitioner asserted that his sentence was void and illegal because "the trial court did not have authority or jurisdiction to sentence [him] outside of his classification range as a range one standard offender," and because his sentence was not imposed in accordance with Tennessee Code Annotated section 40-35-210. The habeas corpus court summarily dismissed the petition, noting that a "plea-bargained sentence may legally exceed the maximum available in the offender [r]ange so long as the sentence does not exceed the maximum punishment authorized for the plea offense." The Petitioner appealed.

### ANALYSIS

On appeal, the Petitioner asserts that his sentence is illegal because the trial court "did not have authority or jurisdiction to sentence [him] outside of his classification range," and the trial court failed to sentence him in accordance with Tennessee Code Annotated section 40-35-210.

Whether the petitioner is entitled to habeas corpus relief is a question of law. Summers v. State, 212 S.W.3d 251, 255 (Tenn. 2007); Hart v. State, 21 S.W.3d 901, 903 (Tenn. 2000). As such, our review is de novo with no presumption of correctness given to the trial court's findings and conclusions. Id.

It is well-established in Tennessee that the remedy provided by a writ of habeas corpus is limited in scope and may only be invoked where the judgment is void or the petitioner's term of imprisonment has expired. Faulkner v. State, 226 S.W.3d 358, 361 (Tenn. 2007); State v. Ritchie, 20 S.W.3d 624, 629 (Tenn. 2000); State v. Davenport, 980 S.W.2d 407, 409 (Tenn. Crim. App. 1998). 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." Summers, 212 S.W.3d at 256 (citing Dykes v. Compton, 978 S.W.2d 528, 529 (Tenn. 1998)). A petitioner bears the burden of establishing a void judgment or illegal confinement by a preponderance of the evidence. Wyatt v. State, 24 S.W.3d 319, 322 (Tenn. 2000).

The Petitioner's assertions are without merit. Our supreme court has repeatedly held that "offender classification and release eligibility are non-jurisdictional and may be used as bargaining tools by the State and the defense in plea negotiations." Hoover v. State, 215 S.W.3d 776, 780 (Tenn. 2007). Thus, "[a] plea-bargained sentence may legally exceed the maximum available in the offender [r]ange so long as the sentence does not exceed the maximum punishment authorized for the plea offense." Id. Second-degree murder is a Class A felony. Tenn. Code Ann. § 39-13-210(c). A trial court is authorized to impose a sentence between fifteen and sixty years for a Class A felony offense. Id. § 40-35-111(b)(1). The Petitioner's plea-bargained sentence of thirty years is well below the maximum punishment authorized for the Class A felony offense of second-degree murder. The Petitioner's "knowing and voluntary guilty plea waive[d] any irregularity as to [his] offender classification or release eligibility." Hicks v. State, 945 S.W.2d 706, 709 (Tenn. 1997).

In addition, the trial court was not required to follow Tennessee Code Annotated section 40-35-210 in imposing the Petitioner's sentence. That statute only applies "[a]t the conclusion of [a] sentencing hearing." See id. § 40-35-210(a). When a trial court accepts the State's and a defendant's "agree[ment] on a specific sentence as to the offense classification, length or manner of service of sentence . . . , no . . . [sentencing] hearing shall be required unless so ordered by the court." Id. § 40-35-205(d); see also id. § 40-35-203(b) ("Where the sentence is agreed upon by the [State] and the defendant and accepted by the court, the court may immediately impose sentence as provided in § 40-35-205(d) and no specific sentencing hearing . . . shall be required."). Here, the Petitioner knowingly and voluntarily pled guilty to second-degree murder in exchange for receiving a thirty-year-sentence. See Kenneth Williams, 2008 WL 5058007, at \*1, \*3. Because the trial court accepted the State's and the Petitioner's sentencing agreement, the trial court was not required to follow Tennessee Code Annotated section 40-35-210 in imposing the Petitioner's sentence.

## CONCLUSION

Based on the foregoing authorities and reasoning, we affirm the habeas corpus court's summary dismissal of the petition.

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ALAN E. GLENN, JUDGE