

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs February 1, 2023

FILED
03/06/2023
Clerk of the
Appellate Courts

DANIEL BENSON TAYLOR v. STATE OF TENNESSEE

Appeal from the Criminal Court for Shelby County
No. B-83987 J. Robert Carter, Jr., Judge

No. W2022-00737-CCA-R3-HC

Daniel Benson Taylor, Petitioner, appeals from the dismissal of his Renewed Petition for Writ of Habeas Corpus (“the Renewed Petition”). Because the Renewed Petition does not comply with the procedural requirements of Tennessee Code Annotated sections 29-21-107(a) and (b)(1), (3), and (4), we affirm the judgment of the habeas corpus court.

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

ROBERT L. HOLLOWAY, JR., J., delivered the opinion of the court, in which TIMOTHY L. EASTER and KYLE A. HIXSON, JJ., joined.

Daniel Benson Taylor, Memphis, Tennessee, Pro Se.

Jonathan Skrmetti, Attorney General and Reporter; Brent C. Cherry, Senior Assistant Attorney General; Steve Mulroy, District Attorney General; and Leslie Byrd, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Procedural Background

Danny Campbell was murdered on September 20, 1980. Following a jury trial, Petitioner was convicted of second degree murder in Mr. Campbell’s death. On October 6, 1982, Petitioner was sentenced to life imprisonment. This court affirmed the conviction and sentence, and the Tennessee Supreme Court denied further review. *State v. Taylor*, 668 S.W.2d 681, 682 (Tenn. Crim. App. 1984).

Petitioner filed a pro se petition for post-conviction relief on June 10, 1988. The post-conviction court summarily dismissed the petition. This court determined that counsel should have been appointed “to review the [P]etitioner’s inartful petition and all the records for the purpose of filing a ‘competently drafted’ amended petition,” reversed the judgment of the post-conviction court, and remanded the case for further proceedings. *Daniel B. Taylor v. State*, No. 50, 1989 WL 44867, at *3 (Tenn. Crim. App. May 3, 1989), *no perm. app. filed*. Following remand, the post-conviction court again dismissed the petition, and this court affirmed the dismissal. *Daniel B. Taylor v. State*, No. 02C01-9703-CR-00091, 1998 WL 119506, at *1 (Tenn. Crim. App. Mar. 18, 1998), *perm. app. denied* (Tenn. Dec. 14, 1998).

Petitioner next filed a declaratory judgment action in the Chancery Court of Davidson County seeking to have the court declare that the 1981 amendment of Tennessee Code Annotated section 40-20-112, which made all felonies infamous crimes resulting in a loss of the right to vote, violated the ex post facto provisions of Article I, § 17 of the Tennessee Constitution and Article I, § 10 of the United States Constitution as applied to Petitioner.¹ The Chancery Court of Davidson County dismissed Petitioner’s request for a declaratory judgment, and the Tennessee Court of Appeals affirmed, stating: “We think the laws disenfranchising convicted felons are simply remedial statutes and are not laws that invoke or increase criminal penalties.” *Daniel B. Taylor v. State*, No. 01-A-01-9707-CH-00338, 1999 WL 58599, at *2 (Tenn. Ct. App. Feb. 9, 1999).² Petitioner filed a petition for rehearing, which was dismissed as untimely. *Daniel B. Taylor v. State*, No. 01-A-01-9707-CH-0033, 1999 WL 401378 (Tenn. Ct. App. June 18, 1999), *perm. app. dismissed* (Tenn. Oct. 11, 1999).

On November 18, 1998, Petitioner filed a petition for writ of habeas corpus, claiming that he should have been sentenced under the Tennessee Criminal Sentencing Reform Act of 1982 (“the 1982 Act”). The habeas corpus court denied relief, and Petitioner appealed. The 1982 Act provided, in pertinent part:

All persons who commit crimes on or after July 1, 1982, shall be tried and sentenced under this chapter. For all persons who committed crimes prior to July 1, 1982, the prior law shall apply and remain in full force and effect in every respect, including but not limited to sentencing, parole and probation.

¹ When Mr. Campbell was killed, homicide was not an infamous crime.

² We note that nine years after the court of appeals issued its opinion, our supreme court, in a three to two opinion, held: “Laws disenfranchising convicted felons are penal in nature. Retroactive application of the statute declaring all felonies infamous crimes is not permissible.” *May v. Carlton*, 245 S.W.3d 340, 349 (Tenn. 2008).

Tenn. Code Ann. § 40-35-112(a) (1982) (repealed 1989).

Petitioner argued that he would have received a lesser sentence under the 1982 Act, and that his sentence should have been governed by the criminal savings statute which provided:

Whenever any penal statute or penal legislative act of the state is repealed or amended by a subsequent legislative act, any offense, as defined by such statute or act being repealed or amended, committed while such statute or act was in full force and effect shall be prosecuted under such act or statute in effect at the time of the commission of the offense. In the event the subsequent act provides for a lesser penalty, any punishment imposed shall be in accordance with the subsequent act.

Tenn. Code Ann. § 39-1-105 (1982) (repealed 1989).³

This court noted that the 1982 Act became effective on July 1, 1982, which was subsequent to Mr. Campbell's murder but prior to Petitioner's sentencing. After stating that the "question presented for our consideration is which of two apparently conflicting statutes is applicable" to Petitioner's case, this court determined that because of its "more specific nature" and "subsequent enactment," Tennessee Code Annotated section 40-35-112 (1982) controlled over Tennessee Code Annotated section 39-1-105 (1982). This court held that Petitioner was properly sentenced under pre-1982 law and affirmed the habeas corpus court's denial of the petition. *Daniel Benson Taylor v. Jack Morgan, Warden*, No. M1999-01416-CCA-R3-PC, 2000 WL 1278373, *1-3 (Tenn. Crim. App. Aug. 31, 2000), *perm. app. denied* (Tenn. Mar. 12, 2001).

Following the habeas corpus court's dismissal of his November 18, 1998 petition, Petitioner filed a civil suit "seeking damages and other relief" from the two judges who dismissed his petition. On August 4, 1999, the trial court granted a motion to dismiss the civil suit and Petitioner appealed. The Tennessee Court of Appeals affirmed "the action of the trial judge in all respects." *Daniel Benson Taylor v. Judge Russell Heldman, et al.*, No. M1999-00729-COA-R3-CV, 2000 WL 1367960, *1 (Tenn. Ct. App. Sept. 22, 2000), *perm. app. denied* (Tenn. Sept. 16, 2002).

On December 14, 2004, Petitioner filed a second petition for a writ of habeas corpus presenting what this court characterized as "the same claim for relief" as he presented in his November 18, 1998 petition—that his sentence is illegal because he should have been

³ The criminal savings statute was codified in 1989 at Tennessee Code Annotated section 39-11-112. The language of section 39-11-112 is identical to the language of section 39-1-105.

sentenced under the 1982 Act. *Daniel Benson Taylor v. State*, No. M2005-00560-CCA-R3-CO, 2005 WL 3262935, at *1 (Tenn. Crim. App. Dec. 1, 2005). This court affirmed the dismissal of the petition, holding that the sentence Petitioner received “was not illegal” and that the habeas corpus court “correctly concluded that [Petitioner] was properly sentenced under pre[-]1982 law.” *Id.* at *3.

On May 9, 2022, Petitioner filed the Renewed Petition. As best as we can determine, Petitioner claims that his sentence is “illegal and void” because:

- (1) the conviction was procured by “misrepresentation of material facts and fraudulent misrepresentation” on the part of the Memphis Police, the grand jury, his court-appointed trial counsel, the Shelby County District Attorney, the trial court and this court;
- (2) he received ineffective assistance of trial counsel;
- (3) he was denied the right to represent himself at the trial;
- (4) his sentence was the result of malicious prosecution;
- (5) the District Attorney breached his fiduciary duty;
- (6) he should have been sentenced under the Sentence Reform Act of 1982, not the pre-1982 law; and
- (7) he should have received a lesser sentence because of the Criminal Savings Statute, Tennessee Code Annotated section 39-11-112.

In its May 26, 2022 order dismissing the Renewed Petition, the habeas corpus court stated:

Petitioner again filed a Petition for Writ of Habeas Corpus in October of 2021. He did not attack the legality of the sentence, from which he ha[s] now been paroled, rather he complained of being rendered “infamous.” The Petition was denied by [the habeas corpus court] on November 29, 2021. On December 14, 2021, Petitioner filed a document asking [the habeas corpus court] to “reconsider” its decision. On February 10, 2022[,] [the habeas corpus court] court denied that Motion for Re-Consideration.

Petitioner now files these documents in which he asks that the record be transmitted to the Court of Criminal Appeals of Tennessee at Jackson,

Tennessee. He also seems to be requesting, again, re-consideration of his Petition for Writ of Habeas Corpus. He attempts to raise issues that he alleges occurred during the trial and investigation of his case. This is yet another attempt at a collateral attack [of] his conviction.⁴

On June 6, 2022, Petitioner filed a notice of appeal from the May 26, 2022 order denying the Renewed Petition.

Analysis

On appeal, Petitioner claims that the habeas corpus court erred by failing to grant a writ of habeas corpus. The State argues that the habeas corpus court properly denied the Renewed Petition because Petitioner failed to comply with the procedural requirements for the filing of habeas corpus petitions and failed to show that his judgment is void or that his sentence has expired. We agree with the State.

“The procedures governing habeas corpus petitions are codified in Tennessee Code Annotated sections 29-21-101 through 29-21-130. These procedural requirements ‘are mandatory and must be followed scrupulously.’” *Summers v. State*, 212 S.W.3d 251, 259 (Tenn. 2007) (quoting *Archer v. State*, 851 S.W.2d 157, 165 (1993)). Tennessee Code Annotated section 29-21-107 provides:

(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,

⁴ The October 2021 petition for writ of habeas corpus, the order denying that petition, the motion to reconsider that order, and the order denying the motion to reconsider are *not* included in the appellate record.

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.

The Renewed Petition is not verified by affidavit. The Renewed Petition does not state: the person by whom and place where Petitioner is restrained, that "the legality of the restraint has not already been adjudged upon a prior proceeding of the same character," that "it is first application for the writ," or that Petitioner has filed previous applications. Copies of the previous petitions are not attached, and the Renewed Petition does not provide the reasons for not attaching copies of previous petitions. The Renewed Petition does not scrupulously follow the mandatory procedural requirements of Tennessee Code Annotated section 29-21-107(a) and (b)(1), (3), and (4). When a petition fails to comply with the statutory procedural requirements, the habeas corpus court may choose to summarily dismiss the petition. *Summers*, 212 S.W.3d at 260.

After Petitioner filed his appellate brief in this case, he moved "to replace" his brief with an amended brief. This court granted the motion, and Petitioner filed what he termed his "Opening Brief and Excerpt of Record" ("the Amended Brief"). In the Amended Brief, Petitioner claims that the habeas corpus court erred by failing to grant relief because "the trial court's erroneous label of infamy in a judgment of conviction warrants remedy and should be declared null and void." Petitioner also claims that he should have been sentenced pursuant to the 1982 Act and not pursuant to the Class X provisions of the prior act.

The issue concerning the "erroneous label of infamy" was not raised in the Renewed Petition, and the issue was not addressed by the habeas corpus court's May 26, 2022 order from which this appeal arises.⁵ "Issues which were not asserted in the habeas petition filed in the trial court will not be considered for the first time on appeal." *Daniel Benson Taylor*, 2005 WL 3262935, at *4. The issue is waived. *See Cauthern v. State*, 145 S.W.3d 571, 579 (Tenn. Crim. App. 2004) ("[A]n issue raised for the first time on appeal is waived.").

⁵ The May 26, 2022 order did state that Petitioner complained of being rendered infamous in his Petition for Writ of Habeas Corpus filed in October 2021, which was denied by the habeas corpus court by order entered on November 29, 2021. Petitioner's December 14, 2021 motion to "reconsider" the habeas court's November 29, 2021 order was denied on February 10, 2022.

Petitioner's claim that he should have been sentenced pursuant to the 1982 Act and not pursuant to the Class X provisions of the pre-1982 law has been previously adjudicated on two occasions. See *Daniel Benson Taylor*, 2000 WL 1278373, *3 (holding that the habeas corpus court "correctly concluded that [Petitioner] was properly sentenced under pre[-]1982 law") and *Daniel Benson Taylor*, 2005 WL 3262935, *3 (this Court previously concluded that Petitioner was properly sentenced under pre-1982 law and the principles of res judicata dictate that this issue not be relitigated).

Conclusion

For the reasons above, the judgment of the habeas corpus court is affirmed.

ROBERT L. HOLLOWAY, JR., JUDGE