

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

NICHOLAS COLEMAN v. STATE OF TENNESSEE

Appeal from the Circuit Court for Bledsoe County
No. 34-2006 J. Curtis Smith, Judge

No. E2006-01105-CCA-R3-HC - Filed November 5, 2007

The pro se petitioner, Nicholas Coleman, appeals the dismissal of his petition for writ of habeas corpus. The state has filed a motion requesting that this court affirm the trial court's judgment pursuant to Rule 20, Rules of the Court of Criminal Appeals. The petition fails to establish the petitioner's claim of an expired sentence. Accordingly, the state's motion is granted and the judgment of the trial court is affirmed.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed
Pursuant to Rule 20, Rules of the Court of Criminal Appeals

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and D. KELLY THOMAS, JR., JJ., joined.

Nicholas Coleman, Pikeville, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; and Jennifer L. Bledsoe, Assistant Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

Pursuant to the terms of a plea agreement, the petitioner's probation in case number 243836 was revoked and his previously imposed four-year sentence for aggravated assault ordered into execution. In addition, the petitioner pled guilty to two counts of violation of the Motor Vehicle Habitual Offender Act (case numbers 250065 & 250525) and upon these convictions was sentenced to consecutive two-years terms to be served concurrently to the four-year sentence for violation of probation. The petitioner was thus sentenced pursuant to the terms of his plea agreement to an effective sentence of four years and ordered to report to begin serving this sentence on December 20, 2004. The referenced judgments include awards of various periods of pre-trial jail credit in each case. No direct appeal of the judgments was taken. The transcript of the plea submission hearing reflects that as part of the plea agreement, four other cases alleging probation violations were dismissed.

On May 8, 2006, the petitioner filed a petition for writ of habeas corpus in which he contended that his effective four-year sentence has expired “due to jail time and actual time served.” In particular, the petitioner contended that he is due some 769 days jail credit for time served on two of the cases dismissed pursuant to his plea agreement as well as additional time served in case number 243836. The petitioner asserted that he has been incarcerated since December 20, 2004, and has “served 16 months additional time.” He contended that “[w]hen totaled the time served comes to 5 years 3 month [sic] 10 days,” and thereby concludes that his effective four-year sentence has long expired. The trial court dismissed the petition, finding that the petitioner’s sentences have not expired. The trial court found that the petitioner began serving his sentences in December 2004. As a result, his two-year sentence in case number 250065 expired in December 2006, while his consecutive, two-year sentence in case number 250525 will expire in December 2008. The trial court further found the “Petitioner’s argument that he is entitled to jail credits earned on other sentences is without merit.” The instant appeal followed.

The purpose of a habeas corpus petition is to contest void and not merely voidable judgments. Archer v. State, 851 S.W.2d 157, 163 (Tenn. 1993) (citing State ex rel. Newsom v. Henderson, 221 Tenn. 24, 424 S.W.2d 186, 189 (1968)). A writ of habeas corpus may be granted 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 burden is on the petitioner to establish that the judgment is void or that the sentence has expired. State ex rel. Kuntz v. Bomar, 214 Tenn. 500, 504, 381 S.W.2d 290, 291-92 (1964). The petitioner’s general claim that the trial court improperly failed to award him additional pre-trial jail credit, even if proven, would render the judgments voidable rather than void. See, e.g., Luttrell v. State, 644 S.W.2d 408, 409 (Tenn. Crim. App. 1982); State v. Bobby Blackmon, No. M2002-00612-CCA-R3-CO, 2003 Tenn. Crim. App. LEXIS 478, *3 (Tenn. Crim. App. May 30, 2003), app. denied, (Tenn. Oct. 6, 2003). Therefore, the claim is not properly cognizable in a habeas corpus proceeding and will not support issuance of the writ. Moreover, the trial court correctly rejected the petitioner’s assertion that he is entitled to have pre-trial jail credits earned on other, unrelated cases that were dismissed applied to the sentences he is currently serving. In summary, the petitioner has presented no evidence to show that his effective four-year sentence has expired or that the challenged judgments are void. The trial court properly denied habeas corpus relief.

Upon due consideration of the pleadings, the record, and the applicable law, the court concludes that the petitioner has not established that he is entitled to issuance of the writ based on his claim of an expired sentence. Accordingly, the state’s motion is granted. The judgment of the trial court is affirmed in accordance with Rule 20, Rules of the Court of Criminal Appeals.

NORMA MCGEE OGLE, JUDGE