

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs February 20, 2007

**ROBERT A. PAYNE v. HOWARD CARLTON, WARDEN**

**Direct Appeal from the Criminal Court for Johnson County  
No. 4899 Robert E. Cupp, Judge**

---

**No. E2006-02148-CCA-R3-HC - Filed April 2, 2007**

---

The petitioner, Robert A. Payne, appeals the dismissal of his petition for a writ of habeas corpus, arguing that he is entitled to relief because his sentences were allegedly enhanced by prior, facially invalid judgments. Following our review, we affirm the habeas corpus court's order of dismissal.

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

ALAN E. GLENN, J., delivered the opinion of the court, in which DAVID H. WELLES and THOMAS T. WOODALL, JJ., joined.

Robert A. Payne, Mountain City, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; and Leslie E. Price, Assistant Attorney General, for the appellee, State of Tennessee.

**OPINION**

**FACTS**

This is the *pro se* petitioner's first petition for a writ of habeas corpus. Our supreme court set out the facts of the underlying crimes in its opinion adjudicating the petitioner's direct appeal:

Shortly after midnight on July 25, 1995, Sgt. Scott Robinson of the Metropolitan Police Department began following the [petitioner], Robert Anthony Payne, a.k.a. Anthony Jordan, after the [petitioner] aroused the officer's suspicion. Robinson testified that the [petitioner's] older model car seemed out of place at the "high dollar" Nashville hotel where Robinson first observed the [petitioner] and the license tag on the car was registered to a newer model rental car. Robinson followed the [petitioner] and awaited back-up before stopping him. The [petitioner] stopped on his own, approached the officer, and demanded to know why he was being followed. He then jumped back into his car and led the officer on a high-speed chase

through a residential neighborhood. During the chase, the [petitioner] made a U-turn and drove his car into the path of Robinson's patrol car. Robinson took evasive measures to avoid a collision. The officer said he continued to pursue the [petitioner] at speeds between 70 and 80 mph through the residential area until the [petitioner] turned off his headlights. Robinson then terminated the pursuit because it had become too dangerous.

In the same neighborhood, four days later, the [petitioner] again attracted the attention of law enforcement officers when he drove into an intersection and into the path of an officer. Officer Allen Finchum, who was patrolling the area, swerved to avoid hitting the [petitioner]. Finchum turned on his blue lights to signal the [petitioner] to stop. The [petitioner] stopped, exited his car, approached the officer, and blamed the officer for speeding. The [petitioner] was ordered back into his car to search for identification. When the [petitioner] could find none, the officer ordered the [petitioner] out of the car. The [petitioner] refused and started the ignition. Finchum reached into the car and struggled with the [petitioner] to prevent him from driving off. The [petitioner] drove away with Finchum holding onto the car for a brief time before letting go. Finchum and Officer Dhana Jones, who was providing back-up assistance, entered their respective cars and pursued the [petitioner].

The [petitioner] led the officers on a chase through the residential area, ignoring stop signs and exceeding the 30-mph speed limit. Finchum testified that the chase occurred in a populated, residential area with people present on the sidewalks. The officers testified that twice the [petitioner] made U-turns and drove straight at them. They had to swerve to avoid a collision. At another intersection, the [petitioner] drove around a car stopped at a traffic light and continued driving. Finchum stated that he and Jones were traveling at speeds between 55 and 60 mph and could not keep up with the [petitioner]. They lost sight of the [petitioner] after he crested a hill. By the time they caught up to him, the collision had occurred.

Just prior to the collision, Noel Aihie was coming to a stop behind the victims' vehicle, which was signaling to turn left. He saw in his rearview mirror the [petitioner's] approaching car. Aihie estimated that the [petitioner's] car was traveling around 70 mph. Aihie moved his truck toward the right curb to avoid a collision. The [petitioner] drove into the opposing lane for oncoming traffic just as the victim, Hattie Gray, was turning left. The [petitioner] struck Gray's car on the driver's side. One of Ms. Gray's children, five-year-old Ashley Gray, died from a skull fracture. The second child, seven-month-old Jasmine Dartis, sustained a head injury, a broken leg, and abrasions. Ten-year-old James Gray sustained head and leg injuries. Ms. Gray sustained broken ribs, a broken pelvis, crushed ankles, a collapsed lung, and a head injury. She remained in a coma for seven days following the collision.

In connection with the July 25th incident, the jury convicted the [petitioner] of aggravated assault of Officer Robinson and reckless endangerment for the threat caused by the pursuit. The jury convicted the [petitioner] of vehicular homicide for the death of Ashley Gray, three counts of aggravated assault for injuring Hattie Gray and her other two children, and reckless endangerment for the threat caused by the pursuit in connection with the July 29th pursuit and accident. The [petitioner] was ordered to serve sentences of 10 years for vehicular homicide, three 8-year sentences for aggravated assault of the members of the Gray family, a 10-year sentence for aggravated assault on an officer, and two 2-year sentences for reckless endangerment. The sentences were ordered to run consecutively for an effective sentence of 48 years.

State v. Payne, 7 S.W.3d 25, 26-27 (Tenn. 1999). The supreme court vacated one of the reckless endangerment convictions and modified the petitioner's sentence to forty-six years. Id. at 26. Subsequently, this court affirmed the denial of post-conviction relief, Robert Anthony Payne v. State, No. M2001-01994-CCA-R3-PC, 2002 WL 1284283, at \*1 (Tenn. Crim. App. June 11, 2002), and the petitioner is currently serving his sentences at the Northeast Correctional Complex. He filed this petition for habeas corpus relief on May 16, 2006.

In his petition, he argues that he is entitled to habeas corpus relief because his Range II, multiple offender status and consecutive sentencing were based on prior judgments that are "facially invalid and void," these being two prior convictions for aggravated assault (case numbers SN9725 and 90S1121) and one for theft of property (case number 90S1126). He contends that these prior judgments are invalid because "he was out on bail for the aggravated assault offenses . . . when he was arrested and charge[d] with the [t]heft of [p]roperty offense . . ., but pursuant to a guilty plea agreement, [he was] ordered to serve" a six-year sentence for the theft offense concurrently with the three-year sentences imposed for the assault offenses, in violation of Tennessee Rule of Criminal Procedure 32(c)(3)(C) and Tennessee Code Annotated section 40-20-111(b), which required his sentence for theft be served consecutively to the sentences for assault. As these prior judgments are "facially invalid," he argues, they could not be used to enhance his punishment in subsequent prosecution, and he is therefore entitled to habeas corpus relief. Additionally, he argues that being sentenced as a Range II, multiple offender under such circumstances constituted an excessive sentence prohibited by the Eighth Amendment to the United States Constitution.

The habeas corpus court summarily dismissed the petition on September 20, 2006, and the petitioner appealed.

### ANALYSIS

Whether the petitioner is entitled to habeas corpus relief is a question of law. 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. See McLaney v. Bell, 59 S.W.3d 90, 93 (Tenn. 2001), overruled in part by Summers v. State, 212 S.W.3d 251 (Tenn. 2007).

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. 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 in which the judgment is facially invalid because the court did not have the statutory authority to render such judgment.” Dykes v. Compton, 978 S.W.2d 528, 529 (Tenn. 1998); see also Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999).

The judgment of a court of general jurisdiction is conclusive and presumed to be valid, and such a judgment can only be impeached if the record affirmatively shows that the rendering court was without personal or subject matter jurisdiction. Archer v. State, 851 S.W.2d 157, 162 (Tenn. 1993). Thus, habeas corpus relief is available only when “it appears upon the face of the judgment or the record of the proceedings upon which the judgment is rendered that a convicting court was without jurisdiction or authority to sentence a defendant, or that a defendant's sentence of imprisonment . . . has expired.” Archer, 851 S.W.2d at 164 (citation omitted). When “a habeas corpus petition fails to establish that a judgment is void, a trial court may dismiss the petition without a hearing.” Summers, 212 S.W.3d at 260 (citing Hogan v. Mills, 168 S.W.3d 753, 755 (Tenn. 2005)).

In the present case, the petitioner’s arguments, presented below and on appeal, depend entirely upon two factual assertions: (1) that the prior judgments in case numbers SN9725, 90S1121, and 90S1126 are facially invalid and void; and (2) that his status as a Range II, multiple offender and consecutive sentencing were ordered in this case because of those allegedly invalid judgments. If either factual assertion is inaccurate, his arguments are without merit. Nothing in the record before this court supports either assertion. He has not provided the judgment forms from case numbers SN9725, 90S1121, or 90S1126, nor has he included any documentation establishing that the trial court relied on these allegedly invalid judgments in ordering consecutive sentences as a Range II, multiple offender. As such, we cannot evaluate his claims.

The petitioner contends that he tried to obtain documentary proof in support of his claims, asserting that he

made several attempts by written certified mail correspondence to the Davidson County Criminal Court Clerk’s [sic], to obtain copies of his prior judgments of convictions, but each correspondence has went [sic] completely ignored by said clerk’s office, even after the [p]etitioner informed the clerk office [sic] said copies of his prior judgments of convictions was [sic] needed in assisting the [p]etitioner to pursue a habeas corpus petition.

In support of this contention, he references a “previous letter to court clerk hereto attached as Exhibit 2,” but no such letter is included as an exhibit. Rather, exhibit two is a certified mail receipt, apparently establishing that on March 20, 2006, a certified letter was mailed from Mountain City to the Davidson County Criminal Court Clerk’s office and was delivered to that office on March 23, 2006.

Accordingly, summary dismissal was proper because the petitioner has failed to support his factual assertions with pertinent documents from the record of the underlying proceedings. Summers, 212 S.W.3d at 254 (holding that “summary dismissal may be proper when, as in this case, the petitioner fails to attach to the habeas corpus petition pertinent documents from the record of the underlying proceedings to support his factual assertions”). Because of this deficiency, dismissal without appointment of counsel was proper. Id. at \*8.

Additionally, in the petitioner’s direct appeal, this court determined that the petitioner had been properly sentenced:

The [petitioner’s] presentence report indicates two prior convictions for unspecified traffic offenses, three convictions for aggravated assault, contributing to the delinquency of a minor, two convictions for possession of unspecified drugs, possession of marijuana, reckless driving, and simple assault. His eleven convictions span a six-year period. His presentence report also indicates arrests on 53 other charges between September 1988 and July 1995 in which the dispositions were unknown. The [petitioner] also admitted to the probation officer that his last use of cocaine and marijuana was July 29, 1995, the date of the fatal collision. Thus, the evidence supports [enhancement of his sentence based on his criminal record].

State v. Robert Anthony Payne, No. 01C01-9701-CR-00031, 1998 WL 315956, at \*13 n.4 (Tenn. Crim. App. June 17, 1998), vacated in part by Payne, 7 S.W.3d at 29-30.

The petitioner’s claim is further deficient because habeas corpus relief is not available for claims that the enhancement of the sentences was not proper or that they are excessive. See James Oliver Ross v. State, No. W2003-00843-CCA-R3-HC, 2003 WL 23100816, at \*1 (Tenn. Crim. App. Dec. 31, 2003).

### CONCLUSION

Based on the foregoing authorities and reasoning, we affirm the habeas corpus court’s order of dismissal.

---

ALAN E. GLENN, JUDGE