IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

DALLAS R. ATWOOD v. STATE OF TENNESSEE, STEPHEN DOTSON, WARDEN

Appeal from the Circuit Court for Dickson County
No. CR-5524 Robert E. Burch, Judge

No. M2006-01678-CCA-R3-HC - Filed November 1, 2006

The Petitioner, Dallas R. Atwood, appeals from the trial court's summary dismissal of his petition seeking habeas corpus relief. The State has filed a motion requesting that this Court affirm the trial court's denial of relief pursuant to Rule 20, Rules of the Court of Criminal Appeals. The State's motion is granted. The judgment of the trial court is affirmed.

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

DAVID H. WELLES, J., delivered the opinion of the court, in which JERRY L. SMITH and ROBERT W. WEDEMEYER, JJ., joined.

Dallas R. Atwood, Pro Se.

Paul G. Summers, Attorney General and Reporter; Brent C. Cherry, Assistant Attorney General; Dan Alsobrooks, District Attorney General; and Mark A. Fulks, Assistant District Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

The petition for habeas corpus relief alleges that the Petitioner pleaded guilty to and was convicted of burglary (other than a habitation) on May 14, 2002. The petition alleges that the Petitioner was sentenced as a persistent offender to serve eight years in the Department of Correction. The petition was filed on May 16, 2006. As grounds for relief, the Petitioner alleges that his guilty plea was not knowingly and voluntarily entered because he received the ineffective assistance of counsel. He also alleges that his sentence was unconstitutionally imposed based on Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531 (2004).

The trial court found that the petition did not allege grounds which, even if true, would entitle the Petitioner to habeas corpus relief. The trial court also noted that the Petitioner had not filed the petition in the court nearest his place of incarceration. It is from the order of the trial court dismissing the petition for habeas corpus relief that the Petitioner appeals.

Habeas corpus relief is available in this state only when it appears on the face of the judgment or the record that the trial court was without jurisdiction to convict or sentence the defendant or that the sentence of imprisonment has otherwise expired. Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993); Potts v. State, 833 S.W.2d 60, 62 (Tenn. 1992). Unlike the post-conviction petition, the purpose of the habeas corpus petition is to contest a void, not merely voidable, judgment. State ex rel. Newsome v. Henderson, 221 Tenn. 24, 424 S.W.2d 186, 189 (1968). A petitioner cannot collaterally attack a facially valid conviction in a habeas corpus proceeding. Potts v. State, 833 S.W.2d 60, 62 (Tenn. 1992); *State ex rel. Holbrook v. Bomar*, 211 Tenn. 243, 364 S.W.2d 887, 888 (1963).

The Petitioner first alleges that he received the ineffective assistance of counsel which rendered his guilty plea involuntary and unknowing. These allegations, if true, would render the convictions and sentences voidable, but not void. If the allegations in a petition for habeas corpus relief do not demonstrate that the judgment is void, a trial court may correctly dismiss the petition without a hearing. See McLaney v. Bell, 59 S.W.3d 90, 93 (Tenn. 2001).

The Petitioner also argues that he is entitled to habeas corpus relief because his sentence was imposed under the Tennessee Sentencing Reform Act of 1989, which he alleges is unconstitutional in view of Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531 (2004). He thus alleges that his sentence was imposed in violation of his right to a jury trial as set forth in Blakely.

The Tennessee Supreme Court has determined that the Blakely decision did not announce a new rule of law and that Tennessee's sentencing structure, under which the Petitioner was sentenced, does not violate a defendant's sixth amendment right to a jury trial. See State v. Gomez, 163 S.W. 3d 632 (Tenn. 2005). This court has previously held that Blakely does not apply retroactively to cases on collateral appeal. See Donald Branch v. State, No. W2003-03042-CCA-R3-PC, 2004 WL 2996894, at *10 (Tenn. Crim. App., Jackson, Dec. 21, 2004), perm. to appeal denied, (Tenn. 2005); see also Carl Johnson v. State, No. W2003-02760-CCA-R3-PC, 2005 WL 181699, at *4 (Tenn. Crim. App., Jackson, Jan. 25, 2005), perm to appeal denied, (Tenn. 2005).

We also note that the trial court properly determined that the petition could not procedurally be treated as a petition for post-conviction relief. The petition was filed outside the statute of limitations for post-conviction petitions, and the petition does not seek to reopen a previous post-conviction petition. See Tenn. Code Ann. § 40-30-102(a), -102(b)(3).

For the reasons stated herein, we conclude that the trial court did not err by summarily dismissing the habeas corpus petition. 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.

DAVID H. WELLES, JUDGE