

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs November 10, 2009

DAVID¹ CANTRELL v. JOE EASTERLING, WARDEN

**Direct Appeal from the Circuit Court for Hardeman County
No. 09-02-0418 Joe Walker, Judge**

No. W2009-00985-CCA-R3-HC - Filed March 10, 2010

In 1995, a Hickman County jury convicted the Petitioner of four counts of aggravated rape and one count of false imprisonment, and the trial court sentenced him as a Range II multiple offender to a total effective sentence of eighty years in the Tennessee Department of Correction. The Petitioner filed a petition for habeas corpus relief, claiming the trial court did not have statutory authority to sentence him as a Range II multiple offender. The habeas court dismissed the petition without a hearing, finding that “[h]abeas corpus relief is not appropriate.” After a thorough review of the record and applicable law, we affirm the judgment of the habeas court.

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

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which JOHN EVERETT WILLIAMS and J.C. MCLIN, JJ., joined.

David Cantrell, Pro se, Whiteville, Tennessee.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; and Rachel E. Willis, Assistant Attorney General, for the Appellee, State of Tennessee.

OPINION

I. Facts & Procedural History

In our decision disposing of the Petitioner’s direct appeal, this Court set forth the following summary of the Petitioner’s conduct underlying this appeal:

¹The Petitioner is referred to in various places in the record as “David L. Cantrell,” “David M. Cantrell,” and “David Cantrell.”

The victim, Eudena Lovell Bates, moved into the Hickman County Line Apartments in January 1995. Shortly after she moved into her apartment, she was introduced to the Defendant, another tenant in the apartments. A few days later, on January 15, the Defendant asked her out for a drink. She told him that she was on her way to work and what time she got off. When Ms. Bates returned home, Defendant was waiting. When she declined to go out because she was tired, he asked if she would at least come and meet some of his friends. She agreed and went to apartment number 7 where she met persons named Steve and Connie. As the Defendant, Connie and Steve all “seemed pretty lit” and wanted more beer, Ms. Bates agreed to drive them into Dickson. On their way back to the apartments, they discussed watching movies at Defendant’s apartment.

Ms. Bates followed Defendant into his apartment, thinking Steve and Connie were behind her. After she realized she was with only the Defendant, he went to the door and locked it. She told the Defendant she was tired and wanted to go home to her apartment. He told her he was Jessie James and to “go for her gun.” When she protested, Defendant proceeded to tell her that no one was leaving the apartment, and that he had killed before and would kill again. Defendant then told her that they were going to have sex. She stood up to get away from him, and he tried to take off her clothes. When she resisted, he told her he would kill her and acted like he was “going for a weapon.” While Ms. Bates never saw a weapon, she believed Defendant to have one in his jacket pocket.

Before her clothes were removed by Defendant, he forced her to perform oral sex on him. When she gagged and started crying, Defendant let her head up but then ripped her clothes off. He told Ms. Bates that she was his wife and belonged to him. After repeatedly threatening and squeezing her, he attempted to have sexual intercourse and penetrated her vaginally “a little bit” with his penis. Defendant also penetrated her vaginally with his fingers. She again resisted only to be met with more of Defendant’s threats and force. He then proceeded to perform oral sex on her.

During the rest of the night, Defendant attempted to have sexual intercourse with her several times. When Defendant finally appeared to have gone to sleep, Ms. Bates got up to get her clothes and escape. Defendant awoke so Ms. Bates said she had to go to the bathroom. He refused to let her shut the bathroom door and told her if she told anyone what had happened he

would kill her.

Defendant finally agreed to leave the apartment the next morning with Ms. Bates after she promised to call his boss to tell him they had gotten married and he would not be there for work. While she drove, he directed her down a dirt road in order to find a pay phone. Ms. Bates became scared and angrily said, "Shoot me, I don't care, but I've had enough." Defendant responded, "F--- you, take me back." They went back to the apartment complex, and Defendant threatened her again. She went straight into her apartment and locked the doors.

Trisha Knight testified that early on the morning of January 16th, Ms. Bates arrived at her house. The two usually rode together to work. On that morning, Knight noticed that the victim "did not look right" and "[h]er face was red and puffy like she'd been crying, and she was walking like her stomach hurt her." Knight also noticed red marks on the victim's neck. When Knight noticed that the victim was not acting like herself, she asked her what was wrong. She told Knight that she had been raped, but did not give any details. Knight told her to go to the authorities, but she was scared and did not want to. On the following day, Ms. Bates showed Knight bruises on her legs, breasts, and arms that looked like markings made by fingers.

John Blanks, an officer in White Bluff, testified that he had been friends with Ms. Bates for the past three years. In January of 1995, Ms. Bates called him and told him she had been raped. She asked him to perform a background check on the Defendant, and he told her to call the police in Hickman County. While Ms. Bates was reluctant to complain to the authorities due to Defendant's threats and his criminal record, she did show Officer Blanks bruises the following day at the police department.

James Beasley, the manager of the apartments where the victim resided, testified that on a Friday evening Ms. Bates told him she had been raped. He advised her to notify the authorities. The following morning, after Ms. Bates agreed, he contacted Woodrow Chandler, a police officer in Burns, Tennessee, who was also involved with women's abuse programs. Chandler talked with Ms. Bates and recommended to her that she make a complaint to the Hickman County Sheriff's Department. Officer Chandler saw bruises on the victim's arm.

Dwight England, Sheriff of Hickman County, testified that in January

of 1995 he became involved in an investigation involving Ms. Bates and Defendant. Ms. Bates came to his office and wanted to talk to an officer regarding the rape. He saw bruises on her arms and legs and photographed them. At Sheriff England's request, Jean Smith, a judicial magistrate for Hickman County, took pictures of the bruises on Ms. Bates' breasts and inner thighs. England stated the bruises were reddish-blue and they were in a pattern with four bruises on one side and one bruise on the other. The various photographs identified by the witnesses and showing bruises on the victim were introduced into evidence and passed to the jury.

Steve Shoemaker, a friend of Defendant and resident at County Line Apartments, and Connie Luttmann, a friend of Shoemaker, testified for the defense that on the evening of January 15, 1995, they accompanied the victim and Defendant to Dickson. After getting some beer, Shoemaker asked the victim to bring them home. Shoemaker and Luttmann returned to his apartment where they talked until approximately 3:30 a.m. During that time, they never heard any sounds from the Defendant's apartment next door. Shoemaker testified he saw the Defendant and victim leave the apartment complex shortly after they let Shoemaker and Luttmann out of the car, and he did not see or hear the victim's car return. He looked outside about 2:30 a.m. and again at 4:30 a.m., but did not see the victim's car parked in the area. Luttmann saw Defendant and the victim standing outside the next morning. On cross-examination, Shoemaker admitted that he was an alcoholic and had been drinking on that day. The Defendant did not testify, and the defense rested.

State v. David L. Cantrell, No. 01C01-9604-CC-00136, 1997 WL 661496, at *1-3 (Tenn. Crim. App., at Nashville, Oct. 24, 1997), *perm. app. denied* (Tenn. July 6, 1998). Based on these facts, the jury convicted the Petitioner of four counts of aggravated rape and one count of false imprisonment. The trial court sentenced the Petitioner to forty years for each of the four aggravated rape convictions, and to eleven months and twenty-nine days for the false imprisonment conviction. The court ordered all of the convictions except one of the aggravated rape convictions be served concurrently, for a total effective sentence of eighty years. On the judgment forms, the trial court checked the box classifying the Petitioner as a "Multiple 35% Range 2" offender. This Court affirmed the Petitioner's convictions and sentence on direct appeal. *See Cantrell*, 1997 WL 661496, at *1.

The Petitioner subsequently filed a petition for habeas corpus relief claiming that his judgments are void because they classify him as a Range II multiple offender, rather than as a multiple rapist, a classification that would require him to serve 100% of each of his sentences. The Petitioner attached a copy of his judgments to the petition, and his petition

complies with the procedural requirements of Tennessee Code Annotated section 29-21-2007 (2006). The habeas court denied relief, finding that the Petitioner's sentences had not expired and that his judgments were not void because the trial court "had jurisdiction or authority to sentence a defendant to the sentence he received. . . . The sentences are not illegal." The Petitioner now appeals that judgment.

II. Analysis

The Petitioner contends his sentences in this case are void because they designate him as a Range II, Multiple Offender, whereas Tennessee Code Annotated section 39-13-523 requires he be designated a Multiple Rapist and serve 100% of his sentence, given his four aggravated rape convictions. The Petitioner cites several cases wherein this Court has ordered that a petitioner's judgment be vacated because the judgment bore an identical error. The State distinguishes the cases cited by the Petitioner by stating that this Court has only vacated judgments with similar flaws where the sentences were based upon guilty pleas rather than a jury's verdict. See *Thomas Braden v. Ricky Bell, Warden*, No. M2004-01381-CCA-R3-HC, 2005 WL 2008200, at *1 (Tenn. Crim. App., at Nashville, Aug. 19, 2005), *no Tenn. R. App. P. 11 application filed*. The State argues that, given this distinction, the appropriate remedy in this case is to require the trial court to correct rather than vacate the Petitioner's judgments.

Whether habeas corpus relief should be granted is a question of law. *Edwards v. State*, 269 S.W.3d 915, 918 (Tenn. 2008). Thus, we apply de novo review and afford no presumption of correctness to the findings and conclusions of the court below. *Id.* (citing *Summers v. State*, 212 S.W.3d 251, 255 (Tenn. 2007); *Hogan v. Mills*, 168 S.W.3d 753, 755 (Tenn. 2005)).

Article I, section 15 of the Tennessee Constitution guarantees the right to seek habeas corpus relief. See *Faulkner v. State*, 226 S.W.3d 358, 361 (Tenn. 2007). The Tennessee statute, however, governs the exercise of this constitutional guarantee. See T.C.A. § 29-21-101 (2006). Although the statute does not limit the number of requests for habeas corpus relief a petitioner may make, it does narrowly limit the grounds upon which a court may grant habeas corpus relief. *Taylor v. State*, 995 S.W.2d 78, 83 (Tenn. 1999). The petitioner must demonstrate by a preponderance of the evidence that "the sentence is void or that confinement is illegal." *Wyatt v. State*, 24 S.W.3d 319, 322 (Tenn. 2000). Consequently, a petitioner must base his request for habeas corpus relief upon the following very narrow grounds: (1) a claim that, because the convicting court was without jurisdiction or authority to sentence the petitioner, the convicting court's judgment is facially invalid and, thus, void; or (2) a claim that the petitioner's sentence has expired. *Stephenson v. Carlton*, 28 S.W.3d 910, 911 (Tenn. 2000); *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993). A

petitioner, thus, must demonstrate the judgment is “void” and not merely “voidable.” *Smith v. Lewis*, 202 S.W.3d 124, 127 (Tenn. 2006). “An illegal sentence, one whose imposition directly contravenes a statute, is considered void and may be set aside at any time.” *May v. Carlton*, 245 S.W.3d 340, 344 (Tenn. 2008) (citing *State v. Burkhardt*, 566 S.W.2d 871, 873 (Tenn. 1978)). In contrast, a voidable judgment is “one that is facially valid and requires the introduction of proof beyond the face of the record or judgment to establish its validity.” *Taylor*, 955 S.W.2d at 83; see *State v. Richie*, 20 S.W.3d 624, 633 (Tenn. 2000).

A habeas court is not required, as a matter of law, to grant the writ or conduct an inquiry into the allegations contained in the petition. See T.C.A. § 29-21-109. If the petition fails on its face to state a cognizable claim, it may be summarily dismissed by the trial court. See *State ex. rel. Byrd v. Bomar*, 381 S.W.2d 280, 283 (Tenn. 1964); T.C.A. § 29-21-109.

The Petitioner in this case argues he is entitled to habeas corpus relief because the trial court erroneously classified him as a Range II multiple offender rather than as a multiple rapist as required by Tennessee Code Annotated section 39-13-523 (1995). Indeed, this provision of the Tennessee Code classifies an offender convicted of rape two or more times as a “multiple rapist” and requires such an offender to serve “the entire sentence imposed by the court.” T.C.A. § 39-13-523(b). This multiple rapist classification is “automatic and is not left to the discretion of the trial court or the prosecutor.” *Thurmond v. Carlton*, 202 S.W.3d 131, 136 (Tenn. Crim. App. 2006). Because a multiple rapist must serve his entire sentence by operation of law rather than by designation of the trial court, a judgment’s notation that a multiple rapist is anything other than a multiple rapist generally does not create an egregiously illegal sentence “to the point of voidness.” See *Braden*, 2005 WL 2008200, at *3-4 (citing *Coleman v. Morgan*, 159 S.W.3d 887, 890 (Tenn. Crim. App. 2004)).

Circumstances exist under which a judgment that erroneously classifies a multiple rapist creates a void sentence requiring habeas corpus relief. For example, where a petitioner who is a multiple rapist pleads guilty in exchange for receiving a classification other than that of a multiple rapist, the petitioner’s negotiated sentence cannot be legally honored. *Smith v. Lewis*, 202 S.W.3d 124, 129-30 (Tenn. 2006). Because such a petitioner waived a jury trial in order to receive the illegal sentence, the judgment misidentifying the petitioner creates an egregiously illegal sentence, and habeas corpus relief may be granted as to the sentence. *Id.* Where a jury verdict rather than a guilty plea supports the petitioner’s conviction, making the trial court responsible for the non-bargained for sentence, the misidentification is merely a clerical error, and clerical errors “may not give rise to a void judgment.” *Braden*, 2005 WL 2008200, at *3-4 (quoting *Coleman*, 159 S.W.3d at 890).

The Petitioner in this case did not plead guilty to his crimes. Rather, his judgments

were entered after a jury trial. Thus, the trial court's erroneous classification of the Petitioner as a multiple offender rather than a multiple rapist is merely a clerical error, which voids neither the judgment nor the sentence in this case. *Id.* Therefore, the Petitioner is not entitled to relief on this issue.

III. Conclusion

After a thorough review of the record and relevant authorities, we conclude that the habeas court properly dismissed the Petitioner's petition for habeas corpus relief. Accordingly, we affirm the judgment of the habeas court.

ROBERT W. WEDEMEYER, JUDGE