

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

JANUARY 1997 SESSION

FILED
February 28, 1997
Cecil W. Crowson
Appellate Court Clerk

JANARDO HOWELL,

Appellant,

VS.

STATE OF TENNESSEE,

Appellee.

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C.C.A. NO. 01C01-9604-CR-00148

DAVIDSON COUNTY

HON. J. RANDALL WYATT, JR.,
JUDGE

(Habeas corpus)

FOR THE APPELLANT:

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OPINION FILED: _____

AFFIRMED

JOHN H. PEAY,
Judge

OPINION

The petitioner filed his petition for writ of habeas corpus on July 25, 1995, in Davidson County, Tennessee. He is presently incarcerated at the Riverbend Maximum Security Institution. According to his petition, his imprisonment arises out of August 17, 1992, convictions in Sevier County, Tennessee, for the sale of cocaine and auto theft. His petition alleges that his sentences are unconstitutional, and he appeals the lower court's denial of his petition. We affirm the judgment below.

Habeas corpus relief is available in Tennessee only when the face of the judgment or the record of the proceedings upon which the judgment is rendered reveals that the convicting court was without jurisdiction or authority over the petitioner, or that the petitioner's sentence of imprisonment has expired. Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993). The petitioner does not claim that his sentence has expired. Thus, he is not entitled to habeas corpus relief on that ground. With respect to the validity of the trial court's judgment, it appears from the record on this appeal that the petition does not include a copy of the underlying judgment or the record of the proceedings on which the judgment was based. A petition for writ of habeas corpus must contain a copy of the "legal process" upon which the petitioner's restraint is based, or a satisfactory reason for its absence. T.C.A. § 29-21-107(b)(2). The petition in this case contains neither. Dismissal was therefore appropriate. State ex rel. Wood v. Johnson, 393 S.W.2d 135, 136 (Tenn. 1965). Moreover, it is the petitioner's burden to show the invalidity of the judgment against him and "in the absence of a production of the judgment, or a copy thereof, we must presume it was and is valid in all respects." State ex rel. George v. Bomar, 390 S.W.2d 232, 234 (Tenn. 1965). See also State v. Banes, 874 S.W.2d 73, 82 (Tenn. Crim. App. 1993) (it is the appellant's responsibility to create an adequate

record on appeal); T.R.A.P. 24(b). Accordingly, the court below did not err when it denied habeas corpus relief.

Although not noted by the court below, the petition does attempt to state grounds for relief cognizable under the post-conviction act, T.C.A. § 40-30-201 et seq. (1996 Supp). However, the petitioner was convicted in Sevier County, Tennessee. The petition was filed in Davidson County, Tennessee, where the petitioner currently resides. Accordingly, the petition was filed in the wrong county. See T.C.A. § 40-30-204(a) (1996 Supp). Therefore, even if the court below had considered the petition as one for post-conviction relief, summary dismissal would have been required. T.C.A. § 40-30-206(b) (1996 Supp).

Dismissal of the petition having been proper, the judgment below is affirmed.

JOHN H. PEAY, Judge

CONCUR:

DAVID H. WELLES, Judge

JERRY L. SMITH, Judge