

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
FEBRUARY SESSION, 1997

FILED

May 16, 1997

Cecil W. Crowson
Appellate Court Clerk

CHARLES MASSENGILL,)
)
Appellant)
)
vs.)
)
STATE OF TENNESSEE,)
)
Appellee)

No. 01C01-9605-CR-00191

DAVIDSON COUNTY

Hon. **SETH NORMAN**, Judge

(Habeas Corpus)

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OPINION FILED: _____

AFFIRMED

David G. Hayes
Judge

OPINION

The appellant, Charles Massengill, appeals the order of the Davidson County Criminal Court dismissing his petition for writ of habeas corpus. On December 12, 1982, the appellant pled guilty in the Sullivan County Criminal Court to one count of second degree murder and one count of grand larceny. On July 22, 1983, the trial court imposed sentences of thirty-five years for the murder conviction and ten years for the grand larceny conviction, to run consecutively. The appellant is presently confined at the Riverbend Maximum Security Institution in Davidson County where he is serving an effective sentence of forty-five years for these convictions. In August, 1995, the appellant filed a *pro se* petition for writ of habeas corpus. On October 16, 1995, with the aid of appointed counsel, the appellant filed an amended petition.

This petition alleges that the appellant's sentences are void because

(1) his sentences are indeterminate and, thereby, violate Tenn. Code Ann. § 40-35-211 (1989); and

(2) his sentences violate the separation of powers clause of the Tennessee Constitution.

On November 21, 1995, the trial court dismissed the petition finding the appellant's allegations to be without merit. The appellant appeals the trial court's ruling.

I. Indeterminate Sentences

The appellant first contends that the release eligibility provisions under Tenn. Code Ann. § 40-35-501 (1982) create indeterminate sentences, which are

prohibited by Tenn. Code Ann. § 40-35-211.¹ He bases this allegation on the discretionary authority of the Board of Paroles to either grant or deny parole. Thus, he argues, because the decision of the Board to grant or deny him parole is uncertain, his sentence is indeterminate.

The fact that parole results in an inmate being released from confinement does not result in terminating the original sentence imposed by the sentencing court. Howell v. State, 569 S.W.2d 428, 433 (Tenn. 1978). Parole does not cause the sentence to expire or terminate, but is merely a conditional release from confinement. See Doyle v. Hampton, 340 S.W.2d 891, 893 (1960); see also Merrell v. State, No. 01C01-9604-CR-00147 (Tenn. Crim. App. at Nashville, Feb. 20, 1997). The appellant confuses the terms "sentence" and "parole." Indeed, even though released from confinement, the defendant continues in constructive custody until the expiration of the full term of his sentence. Howell, 569 S.W.2d at 433. Thus, the sentence imposed by the sentencing court remains determinate. As the trial court concluded, "[t]he parole board has no authority to determine the term of the sentence, but it does have discretion in deciding how that sentence will be served." This issue is without merit.

II. Separation of Powers

Next, the appellant alleges that Tenn. Code Ann. §40-35-601(1992) and Tenn. Code Ann. § 40-35-211 (1989), establishing a parole system for eligible

¹Tenn. Code Ann. § 40-35-211 provides, in pertinent part:
"In fixing a sentence for a felony or misdemeanor, the court shall impose a specific sentence length for each offense.

(1) Specific sentences for a felony shall be for a term of years or months or life, if the defendant is sentenced to the department of correction There shall be no indeterminate sentences. Sentences for all felonies . . . shall be determinate in nature, and the defendant shall be responsible for the entire sentence. . . .

inmates, violate the separation of powers clause of the Tennessee Constitution.² The appellant argues that the authority of the Board of Paroles to grant or deny parole unconstitutionally encroaches upon the power of the judiciary to impose sentences. Specifically, he argues that the legislature, by enacting Tenn. Code Ann. § 40-35-601, usurped the judiciary's sentencing power and bestowed it upon the Parole Board, a legislatively created entity.

The doctrine of separation of powers, as set forth in Article II of the Tennessee Constitution, is a fundamental principal of American constitutional government.³ Town of South Carthage v. Barrett, 840 S.W.2d 895, 897 (Tenn. 1992) (citation omitted). Our constitution divides the powers of government into three distinct, independent, and coordinate departments, namely, legislative, executive, and judicial, with express prohibition against any encroachment by one department upon the powers, functions, and prerogatives of the others, except as directed or permitted by some other provision of the constitution. Richardson v. Young, 122 Tenn. 471, 491, 125 S.W. 664, 668 (1910). While it is the province and duty of the judicial department to interpret the law, it is equally the exclusive province of the legislature to formulate policies, mandate programs, and to establish their relative priority, and, once the legislature, exercising its delegated powers, has decided the policy in a given area, it is for the executive department to administer the laws and for the courts to enforce them when

²Initially, we note that the appellant cites to the Criminal Sentencing Reform Act of 1989. This act became effective on November 1, 1989. The appellant, however, was sentenced on July 22, 1983. Accordingly, he was sentenced under the Criminal Sentencing Reform Act of 1982. Therefore, his challenge should have been presented under Tenn. Code Ann. § 40-35-203 (1982) (court to impose sentence), Tenn. Code Ann. § 40-35-504 (1982) (release classification status programs), and Tenn. Code Ann. § 40-28-101 *et seq.* (1982) (probation, paroles and pardons).

³Article II of the Tennessee Constitution provides:

Sec. 1. Division of Powers. -- The powers of the Government shall be divided into three distinct departments: the Legislative, Executive, and Judicial.

Sec. 2. Limitation of Powers. -- No person or persons belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in the cases herein directed or permitted.

enforcement is sought. Tennessee Valley Authority v. Hill, 437 U.S. 153, 194, 98 S.Ct. 2279, 2301-02 (1978); see also Richardson v. Young, 122 Tenn. at 493, 125 S.W. at 668.

The setting of punishment is a legislative function. See Lavon v. State, 586 S.W.2d 112 (Tenn. 1979); Sandford v. Pearson, 231 S.W.2d 336 (Tenn. 1950). Inherent within the legislature's function to establish punishment is its authority to promulgate laws devising and establishing a statutory scheme of parole. Also within the legislature's authority is the ability to create an administrative agency to oversee and implement the expressed policy and program of the statutes pertaining to parole. Cf. State v. Edwards, 572 S.W.2d 917, 919 (Tenn. 1978).

The authority to grant parole to eligible inmates rests with the Board of Paroles, an agency of the executive branch. Tenn. Code Ann. § 40-28-103, -106. As established by our legislature, the authority to grant paroles is not judicial in nature, but is administrative. Woods v. State, 130 Tenn. 100, 114, 169 S.W. 558, 560 (1914). The administration of the parole system is neither purely judicial, legislative, nor executive, but rather, belongs "to the great residuum of governmental authority, the police power, to be made effective, as is often the case, through administrative agencies." Id. As such, the laws regarding sentencing and paroles do not unconstitutionally confer judicial powers upon executive officers. This issue is without merit.

III. Conclusion

In Tennessee, habeas corpus relief is only available when a conviction is void because the convicting court was without jurisdiction or authority to sentence a defendant, or that a defendant's sentence has expired and he is being illegally restrained. Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993). In the present case, the appellant's allegations, even if true, would not render his convictions void, but merely voidable. The appellant has failed to establish that the sentencing court was without jurisdiction or authority to sentence the appellant, nor is there any proof that his sentence has expired. Accordingly, we conclude that the petition for a writ of habeas corpus was properly dismissed. The judgment of the trial court is affirmed.

DAVID G. HAYES, Judge

CONCUR:

GARY R. WADE, Judge

J. CURWOOD WITT, JR., Judge