IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE AT JACKSON

RODNEY BUFFORD,)		
Petitioner,) C. C. A. NO.	02C01-9904-CC-00131	
vs.) LAUDERDA) LAUDERDALE COUNTY	
STATE OF TENNESSEE,)) No. 5227)	FILED	
Respondent.)		
		July 9, 1999	
	<u>ORDER</u>	Cecil Crowson, Jr. Appellate Court Clerk	

This matter is before the Court upon motion of the state to affirm the judgment of the trial court pursuant to Rule 20, Rules of the Court of Criminal Appeals. This case represents an appeal from the trial court's dismissal of the petitioner's petition for a writ of habeas corpus. On January 23, 1997, the petitioner pled guilty to aggravated rape and received a 13 ½ year sentence. Apparently, no appeal was taken. In his present petition, the petitioner claims his guilty plea was involuntarily entered. The trial court dismissed the petition, finding that this is not an appropriate matter for consideration in a habeas corpus proceeding. The trial court also noted that petitioner would not be entitled to post-conviction relief in this instance because the statute of limitation had expired and because the petition was filed in the wrong county.

On appeal, the petitioner claims the trial court erred in treating his petition as one seeking post-conviction relief. If treated as a petition for post-conviction relief, the petition would clearly be time barred. T.C.A. § 40-30-202. However, even considering this a petition for writ of habeas corpus, the petitioner is still entitled to no relief.

Habeas corpus relief is available in Tennessee <u>only</u> 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 or other restraint has expired.

Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993) (emphasis added). The judgment clearly reflects that the convicting court had jurisdiction over this petitioner and that the petitioner's sentence has not expired. Since the petitioner's allegation in this case would necessarily involve investigation beyond the face of the judgment or record, the trial court properly denied habeas corpus relief. See id. Even if the petitioner's claim has merit, such claim renders the judgment voidable, not void, and it may not be collaterally attacked in a suit for habeas corpus relief. Passarella v. State, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994). Moreover, when a petition for a writ of habeas corpus fails to state a cognizable claim, the trial court may summarily dismiss the petition. See Id.

Accordingly, for the reasons stated above, it is hereby ORDERED that the state's motion is granted and the judgment of the trial court is affirmed in accordance with Rule 20, Rules of the Court of Criminal Appeals. Since the record reflects the petitioner is indigent, costs of this proceeding shall be taxed to the state.

JOE G. RILEY, JUDGE

DAVID G. HAYES, JUDGE

JOHN EVERETT WILLIAMS, JUDGE