

IN THE COURT OF CRIMINAL APPEALS OF  
TENNESSEE

AT KNOXVILLE

SEPTEMBER 1999 SESSION

**FILED**

November 12, 1999

Cecil Crowson, Jr.  
Appellate Court Clerk

**MALCOLM L. CROWELL, JR.,**

Appellant,

vs.

**JAMES A. BOWLEN, Warden,  
and THE TENNESSEE  
DEPARTMENT OF CORRECTION,**

Appellees.

C.C.A. No. 03C01-9812-CC-0441

Bledsoe County

Hon. Buddy Perry, Judge

(Habeas Corpus)

**FOR THE APPELLANT:  
MALCOLM L. CROWELL, JR.**

*Pro Se*

#15312

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OPINION FILED: \_\_\_\_\_

**AFFIRMED**

**JAMES CURWOOD WITT, JR., JUDGE**

## OPINION

The petitioner, Malcolm L. Crowell, Jr., appeals from the Bledsoe County Circuit Court's dismissal of his petition for *habeas corpus* relief. The petitioner contends he is being illegally restrained past the expiration of his sentence. The lower court found otherwise. On appeal, the petitioner seeks immediate release, or alternatively, remand for a hearing upon a complete record, which he alleges the lower court did not have before it at the time it dismissed his petition. Upon review of the record, the briefs of the parties, and the applicable law, we agree with the trial court's conclusion that the petitioner is not being held past the expiration of his sentence, although we disagree with the trial court's findings in reaching that conclusion. Further, we find no basis for ordering a remand and a hearing. Accordingly, we affirm the judgment of the trial court.

The petitioner was convicted of two counts of grand larceny on April 19, 1989. He received concurrent six-year sentences, the majority of which were to be served on probation. The judgments ordered that the defendant must commence serving these sentences on May 2, 1989. Apparently, the petitioner did not fare well on probation. The record reflects that he violated many of the rules of probation, and violation warrants were issued at various times during the period of his sentences. Relevant to this appeal are two revocation warrants – the first was filed on January 26, 1993, and the second was issued on September 7, 1994. According to documentation in the record, the January 26, 1993 warrant was retired on February 21, 1994. However, on November 14, 1995, the defendant pleaded true to the September 7, 1994 warrant, and his probationary status was revoked. Apparently, it was due to this revocation, as well as new convictions from Lewis County, that the petitioner was returned to confinement.

In his petition for the writ of *habeas corpus*, the petitioner alleges that he is being held illegally past the expiration of his sentence because his six-year sentence expired on May 2, 1995, but his probationary sentence was not revoked until November 14, 1995. This contention has no basis in law. It is well-settled that the timely issuance of a revocation warrant tolls the statute of limitations for revoking a probationer's sentence. See, e.g., Allen v. State, 505 S.W.2d 715 (Tenn.

1974). Moreover, a trial court which revokes a defendant's probation may order that the "original judgment . . . shall be in full force and effect from the date of the revocation of such suspension . . . ." Tenn. Code Ann. § 40-35-310 (1997); see State v. Taylor, 992 S.W.2d 941, 945 (Tenn. 1999). As such, the petitioner's claim that he is being held beyond his alleged sentence expiration date of May 2, 1995 is without merit.

The petitioner alternatively contends that the trial court decided this case without a full record before it and asks that we remand the case for a hearing on the "complete record." The petitioner's allegation of an incomplete record appears to stem from the trial court's determination in its order dismissing the *habeas corpus* petition that the November 14, 1995 revocation order was the result of the January 26, 1993 revocation warrant. According to the petitioner, the lower court's conclusion was in error because the January 1993 warrant was retired in February 1994. The petitioner is correct in this contention. However, the petitioner does not address the determinative fact that a subsequent violation warrant was issued on September 7, 1994, which recommenced revocation proceedings that resulted in the lower court revoking the petitioner's probationary sentence on November 14, 1995.<sup>1</sup> All of the information in the appellate record from which these conclusions were drawn came from the records of the trial court. As such, the trial court had access to complete information. The fact that the trial court incorrectly relied on a retired warrant in its findings does not change the fact that a subsequent warrant was issued to which the petitioner ultimately pleaded true and had his probation revoked.

We find no error requiring reversal. Accordingly, we affirm the Bledsoe County Circuit Court's order dismissing the *habeas corpus* petition.

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<sup>1</sup>We have been greatly assisted in the determination of this issue by the state's efforts to supplement the appellate record with relevant documents which were not originally contained in the record on appeal.

JAMES CURWOOD WITT, JR., JUDGE

CONCUR:

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GARY R. WADE, PRESIDING JUDGE

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JERRY L. SMITH, JUDGE