

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

NOVEMBER 1999 SESSION

FILED

December 16, 1999

Cecil Crowson, Jr.
Appellate Court Clerk

FREDRICK B. ZONGE,)
)
 Appellant,) No. 03C01-9903-CR-00094
)
) Morgan County
v.)
) Honorable E. Eugene Eblen, Judge
)
STATE OF TENNESSEE,) (Habeas corpus)
)
 Appellee.)

For the Appellant:

Joe H. Walker
District Public Defender
and
Susan Corea Fuller
Assistant District Public Defender
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For the Appellee:

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and
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OPINION FILED:_____

AFFIRMED

Joseph M. Tipton
Judge

O P I N I O N

The petitioner, Fredrick B. Zonge, appeals as of right from the Morgan County Criminal Court's dismissal of his petition for a writ of habeas corpus. He is presently in the Department of Correction serving an effective thirty-five-year sentence as a Range II offender for his 1994 convictions for especially aggravated kidnapping, especially aggravated burglary, aggravated assault, and theft of property valued at over one thousand dollars. This court modified the petitioner's especially aggravated burglary conviction to aggravated burglary, modified his sentence on that count to nine years and his fine to ten thousand dollars, and affirmed the trial court in all other respects. State v. Zonge, 973 S.W.2d 250 (Tenn. Crim. App. 1997). The petitioner contends that:

- (1) by prohibiting him from testifying in his own defense, the trial court lost its jurisdiction over both the subject matter and the petitioner, thereby making the subsequent judgment void and his resulting incarceration illegal;
- (2) the trial court's denial of his request to withdraw as counsel pro se deprived him of his right to counsel thereby rendering the judgments void; and
- (3) the trial court acted beyond its authority and denied him due process of law by refusing to grant him a continuance, which resulted in his being tried in prison attire.

The state contends that the trial court properly dismissed the petition because the judgments are not void on their face nor has the petitioner presented any evidence that his sentence has expired. We affirm the trial court's dismissal of the petition for a writ of habeas corpus.

A petition for the writ of habeas corpus may be brought if the judgment is void or the sentence has expired. Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993). However, if the claimed illegality renders the judgment or sentence voidable, rather than void, no relief can be granted. Id. at 161. Alleged violations of constitutional rights are addressed in post-conviction, not habeas corpus, proceedings. Luttrell v. State, 644

S.W.2d 408, 409 (Tenn. Crim. App. 1982). The underpinning of all three of the petitioner's claims is that the trial court violated his constitutional rights, whether it be his Fifth Amendment right to testify in his own defense, his Sixth Amendment right to counsel, or his right to due process under the Fourteenth Amendment. These claims are not cognizable in a habeas corpus proceeding.

The petitioner contends that his petition for a writ of habeas corpus is proper because by committing these constitutional violations, particularly the limitation of his testimony, the trial court lost its lawful authority, rendering the judgments void. Tenn. Code Ann. § 16-10-102 grants the circuit courts exclusive original jurisdiction over all crimes. Citing State ex rel. Anglin v. Mitchell, 575 S.W.2d 284, 287 (Tenn. 1979), the petitioner argues that a court can lose its jurisdiction during the pendency of the trial if it fails to give the defendant due process of law. In Anglin, our supreme court stated that a trial court's denial of a defendant's right to counsel rendered the judgment void and necessitated release by habeas corpus. Id. at 288.

However, in Archer, our supreme court rejected the broadened application of habeas corpus found in Anglin. 851 S.W.2d at 162-64; see also Passarella v. State, 891 S.W.2d 619, 628 (Tenn. Crim. App. 1994) (noting that Archer impliedly overruled Anglin's language regarding the use of habeas corpus when the trial court violated the defendant's right to counsel). The court traced the development of habeas corpus law, noting that Tennessee has long required a strict interpretation of the writ's application. Archer, 851 S.W.2d at 160-62. In spite of the traditionally narrow application of habeas corpus, "judicial decisions rendered after the passage of the Post-Conviction Procedure Act began to blur the distinction between" the writ of habeas corpus and post-conviction relief. Id. at 162. The court attributed Anglin's expansive view of the applicability of habeas corpus to this trend, but noted that it has not followed Anglin in subsequent decisions. Id. at 162-63. Archer reaffirmed the traditional scope of the writ:

Habeas corpus relief is available in Tennessee only 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.

Id. at 164. Nothing in the present judgments or the record presented for our review indicates that the Obion County Criminal Court lacked jurisdiction. The petitioner’s reliance upon Anglin is misplaced.

A trial court may treat a habeas corpus action as a petition for post-conviction relief. Tenn. Code Ann. § 40-30-205(c). In this case, the venue prevented such treatment. A habeas corpus petition is filed where the petitioner is restrained, the court “most convenient in point of distance to the applicant,” unless the petition gives a “sufficient reason” otherwise. Tenn. Code Ann. § 29-21-105. A post-conviction petition, on the other hand, is filed in the convicting court. Tenn. Code Ann. § 40-30-204(a). The petitioner was convicted in the Obion County Criminal Court, and he filed his petition for a writ of habeas corpus in the Morgan County Criminal Court. The Morgan County Criminal Court lacked jurisdiction to treat his habeas corpus petition as a petition for post-conviction relief. Furthermore, a court lacking jurisdiction over the petition does not have the power to transfer the case to the proper county absent a statute to the contrary. Norton v. Everhart, 895 S.W.2d 317, 319 (Tenn. 1995).

Based upon the foregoing and the record as a whole, we affirm the trial court’s dismissal of the petition for a writ of habeas corpus.

Joseph M. Tipton, Judge

CONCUR:

Jerry L. Smith, Judge

Norma Ogle, Judge