

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs April 12, 2016

STATE OF TENNESSEE v. SAMMIE LEE TAYLOR

**Appeal from the Criminal Court for Shelby County
No. P-19190 James M. Lammey, Judge**

No. W2015-01831-CCA-R3-CD – Filed June 6, 2016

The Defendant, Sammie Lee Taylor, was convicted in 1994 of first degree felony murder, especially aggravated kidnapping, especially aggravated robbery, and aggravated sexual battery and received an effective sentence of life imprisonment without the possibility of parole plus sixty-two years. In 2015, the Defendant filed a motion pursuant to Tennessee Criminal Procedure Rule 36.1 requesting the correction of illegal sentences. The trial court summarily dismissed the motion for failure to state a colorable claim. On appeal, the Defendant contends that the trial court erred by dismissing the motion. We affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

ROBERT H. MONTGOMERY, JR., J., delivered the opinion of the court, in which THOMAS T. WOODALL, P.J., and ALAN E. GLENN, J., joined.

Sammie Lee Taylor, Clifton, Tennessee, Pro Se.

Herbert H. Slatery III, Attorney General and Reporter; Lacy E. Wilber, Senior Counsel; and Amy P. Weirich, District Attorney General; and Glenn Baity, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

On February 17, 1994, the Defendant, a juvenile at the time of the offenses, was indicted for three counts of first degree felony murder, two counts of especially aggravated kidnapping, two counts of aggravated rape, and especially aggravated robbery. The Defendant's case originated in the juvenile court but was transferred to criminal court. The

jury imposed a sentence of life imprisonment without the possibility of parole for the felony murder conviction. The trial court imposed an effective sixty-two-year sentence for the remaining convictions and ordered consecutive service with the life sentence. *See State v. Sammie Lee Taylor*, No. 02C01-9501-CR-00029, 1996 WL 580997, at *1 (Tenn. Crim. App. Oct. 10, 1996), *perm. app. denied* (Tenn. Mar. 3, 1997) (“*Taylor I*”).

The Defendant unsuccessfully appealed his convictions, alleging, in relevant part, that (1) the evidence was insufficient to sustain his convictions, (2) the trial court erred by denying the Defendant’s supplemental motion to remand the proceedings to the juvenile court and denying the Defendant’s request to make an offer of proof regarding the supplemental motion, (3) the court erred by denying the Defendant’s motion to suppress his statements to the police, (4) the court erred by denying the Defendant’s motion to strike the State’s motion seeking enhanced punishment, (5) the court erred by denying the Defendant’s motion for a mistrial due to prosecutorial misconduct, and (6) the Defendant’s sentence was cruel and unusual. *Id.* This court denied relief and affirmed the Defendant’s convictions and sentences.

The Defendant unsuccessfully sought post-conviction relief, alleging that trial counsel was ineffective by (1) failing to request a change of venue, (2) failing to present psychological expert testimony during sentencing, and (3) failing to pursue DNA testing. He also alleged that his juvenile court counsel was ineffective by (1) failing to raise all legal and factual issues at the transfer hearing, (2) failing to object to an improperly seated juvenile judge, and (3) failing to object to or rebut the State’s psychologist’s opinion testimony. *See Sammie Lee Taylor v. State*, No. W1999-00977-CCA-R3-CD, 2000 WL 714387 (Tenn. Crim. App. May 26, 2000), *perm. app. denied* (Tenn. Dec. 4, 2000) (“*Taylor II*”). This court affirmed the denial of post-conviction relief.

The Defendant also sought habeas corpus relief relative to his especially aggravated robbery conviction. The Defendant attacked only the validity of the sentence but was still serving his life sentence at the time he filed his petition, rendering any attack on the especially aggravated robbery conviction premature. *See Sammie L. Taylor v. State*, No. M2003-02954-CCA-R3-HC, 2004 WL 2636716, at *1-2 (Tenn. Crim. App. Nov. 15, 2004), *perm. app. denied* (Tenn. Mar. 28, 2005) (“*Taylor III*”).

On June 10, 2015, the Defendant filed a motion to vacate, set aside, or correct an illegal sentence pursuant to Tennessee Rule of Criminal Procedure 36.1. The Defendant alleged his life without the possibility of parole and remaining sentences were illegal on multiple grounds. He argued his life sentence was illegal because (1) he was denied a fair juvenile court transfer hearing because the juvenile court abused its discretion by improperly relying upon a single psychologist’s opinion of the Defendant’s competency and by not permitting another psychologist to perform an evaluation, (2) his juvenile court counsel provided ineffective assistance, (3) his statements to the police were obtained without

counsel, without his being advised of his *Miranda* rights, and in violation of his privilege against self-incrimination, (4) his life sentence offends *Miller v. Alabama*, --- U.S. ---, 132 S. Ct. 2455 (2012), because life without parole and life are equivalent sentences and because life without parole was imposed without consideration for his age, characteristics, and circumstances, (5) trial counsel provided the ineffective assistance by failing to present evidence of his mens rea for first degree felony murder and by failing to present a mental health expert to rebut the State's expert witness, (6) he was diagnosed as "borderline intellectually disabled," (7) his life sentence offends principles of double jeopardy, (8) the jury was provided vague and confusing instructions as it relates to release from confinement when sentenced to life imprisonment, (9) the jury and trial court failed to consider mitigating factors during sentencing, (10) the trial court improperly refused to instruct the jury on facilitation of felony murder, (11) Tennessee Code Annotated sections 39-13-204(e)(2) and 39-13-208(b) are unconstitutional, (12) principles of due process were violated by the juvenile court's transferring his case without sufficient information, by this court's failure to review the appropriateness of his life sentence, and by trial counsel's failure to request a jury instruction regarding "borderline mental retardation" at the sentencing phase, (13) his life sentence was the result of prosecutorial punishment and selective prosecution in response to exercising his right to a jury trial, (14) consecutive service of his sentences violates principles of due process and equal protection, and (15) he was improperly sentenced for aggravated sexual battery because insufficient proof existed.

The trial court entered an order summarily dismissing the motion on the grounds that the motion raised issues previously adjudicated and that the Defendant failed to state any colorable claim for which relief could be granted. This appeal followed.

The Defendant contends that the trial court erred by summarily dismissing his motion for a corrected sentence. He argues that (1) his life without the possibility of parole sentence was rendered illegal by *Miller*, (2) due to the jury's lack of discretion in sentencing the Defendant to life without the possibility of parole, the trial court lacked personal and subject matter jurisdiction, (3) his allegations of ineffective assistance were not previously determined, (4) the juvenile court transfer hearing violated the Defendant's due process rights because the juvenile referee lacked sufficient information to justify the transfer, (5) he was denied a fair and impartial jury verdict resulting in an illegal sentence, (6) that the evidence was insufficient to support his first degree murder and aggravated sexual battery convictions, (7) Code section 39-13-202 was not effective at the time he was charged with the offenses and was inapplicable to juveniles, (8) his confession was illegally obtained, (9) the trial court retaliated against him for exercising his right to a jury trial by sentencing him more harshly than his codefendants, (10) consecutive sentencing was not justified, (11) prosecutorial misconduct occurred during closing arguments, (12) the trial court violated principles of double jeopardy by instructing the jury relative to an aggravating factor that was an element of felony murder, (13) Code section 39-13-204 violates the single-subject and caption rules of the Tennessee Constitution, (14) Code section 39-13-204 is

unconstitutionally vague, and (15) the jury should have been instructed on lesser included offenses of felony murder. The State responds that the trial court properly dismissed the motion.

Tennessee Criminal Procedure Rule 36.1 states, in relevant part, that

(a) Either the defendant or the state may, at any time, seek the correction of an illegal sentence by filing a motion to correct an illegal sentence in the trial court in which the judgment of conviction was entered. For purposes of this rule, an illegal sentence is one that is not authorized by the applicable statutes or that directly contravenes an applicable statute.

Tenn. R. Crim. P. 36.1(a). A defendant is entitled to a hearing and the appointment of counsel if the motion states a colorable claim for relief. *Id.* at 36.1(b). Further, the trial court is required to file an order denying the motion if it determines that the sentence is not illegal. *Id.* at 36.1(c)(1).

Whether a defendant states a colorable claim is a question of law and is reviewed de novo. *State v. Wooden*, 478 S.W.3d 585, 588 (Tenn. 2015). A colorable claim is defined as “a claim that, if taken as true and viewed in a light most favorable to the moving party, would entitle the moving party to relief under Rule 36.1.” *Id.* at 593. A motion filed pursuant to Rule 36.1 “must state with particularity the factual allegations on which the claim for relief from an illegal sentence is based.” *Id.* at 594. A trial court “may consult the record of the proceeding from which the allegedly illegal sentence emanated” when determining whether a motion states a colorable claim for relief. *Id.*

Only fatal errors result in an illegal sentence and “are so profound as to render the sentence illegal and void.” *Id.* at 595; *see State v. Cantrell*, 346 S.W.2d 445, 452 (Tenn. 2011)). Fatal errors include sentences imposed pursuant to an inapplicable statutory scheme, sentences that designate release eligibility dates when early release is prohibited, sentences that are ordered to be served concurrently when consecutive service is required, and sentences that are not authorized by statute. *Wooden*, 478 S.W.3d at 595. Errors which are merely appealable, however, do not render a sentence illegal and include “those errors for which the Sentencing Act specially provides a right of direct appeal.” *Id.*; *see Cantrell*, 346 S.W.2d at 449. Appealable errors are “claims akin to . . . challenge[s] to the sufficiency of the evidence supporting a conviction” and “involve attacks on the correctness of the methodology by which a trial court imposed sentence.” *Wooden*, 478 S.W.3d at 595; *see Cantrell*, 346 S.W.2d at 450-52.

The record reflects that the trial court properly denied the motion for a corrected sentence. Relative to the Defendant’s arguments regarding whether counsel provided ineffective assistance, whether he was properly transferred to criminal court and sentenced as

an adult, whether he received a fair and impartial jury verdict, whether the evidence was sufficient to support the first degree murder and aggravated sexual battery convictions, whether Code section 39-13-202 was effective and provided adequate notice at the time of the offense, whether the prosecutor made improper statements during closing argument, and whether his pretrial statements to the police were lawfully obtained, we conclude that these claims, even if true, would not entitle the Defendant to relief because they are not fatal errors rendering his sentences illegal and void. *See Wooden*, 478 S.W.3d at 595. Therefore, the Defendant fails to state a colorable claim for relief relative to these arguments. We note that the record reflects that these claims have been previously determined. *See Taylor II*, 2000 WL 714387, at *2-5; *see also Taylor I*, 1996 WL 580997, at *7-9, 10-15, 21-24. This court is bound by the conclusions reached in the previous appeals.

Relative to the Defendant's contention that his life without parole sentence was rendered illegal by *Miller*, we conclude that the Defendant does not raise a colorable claim. The Defendant argues that the only choices available to the jury during sentencing were life and life without parole, both of which would likely lead to the Defendant's death in prison, and therefore his sentence of life without parole was "mandatory" as prohibited by *Miller*. Even if we assume *Miller* retroactively applies to the Defendant's case, Rule 36.1 addresses sentences that were not authorized by statute at the time of sentencing. The Defendant's sentence was authorized by statute at the time of the offenses, and therefore this claim is not a proper basis for relief under Rule 36.1. We also note that changes in constitutional law render a sentence voidable, not illegal and void. *See Taylor v. State*, 995 S.W.2d 78, 84 (Tenn. 1999). The Defendant is not entitled to relief on this basis.

Relative to the Defendant's contention that the trial court lacked jurisdiction to sentence him, the court's jurisdiction was based upon the order transferring his case from juvenile to criminal court. The claim was litigated in the appeal of the Defendant's convictions. We note that the claim was also discussed in the appeal of the Defendant's post-conviction petition in which he alleged his juvenile court counsel's representation was ineffective during the transfer hearing. Because this court concluded that the Defendant's case was properly transferred to the criminal court, the trial court had jurisdiction to sentence the Defendant. We note that the Defendant's sentence was permissible pursuant to Code section 39-13-202 as it existed at the time of the offenses. The Defendant is not entitled to relief on this basis.

Likewise, the Defendant's contentions that the trial court retaliated against him for exercising his right to a jury trial by sentencing him to sixty-two years for the non-homicide-related offenses and that consecutive sentencing was not appropriate in his case are not colorable claims for Rule 36.1 relief. These claims, even if true, would not render his sentence illegal. Additionally, the constitutionality of the non-homicide-related sentences was previously reviewed by this court in the context of cruel and unusual punishment in the appeal of the Defendant's convictions, and this court concluded no error existed. *See Taylor*

I, 1996 WL 580997, at *22-24. The Defendant's sentences were authorized by our statutes and did not exceed the permissible punishment range. Relative to consecutive sentencing, this court concluded in a previous appeal that consecutive sentencing in the present case was not unconstitutional or excessive. *Id.* at *23-24. The Defendant is not entitled to relief on this basis.

We also conclude that the Defendant's double jeopardy claim and his claim that Code section 39-13-204 is unconstitutional are not colorable claims pursuant to Rule 36.1. Errors implicating constitutional rights would only render the judgments voidable, not void. *See Taylor*, 995 S.W.2d at 84. In addition, the Defendant does not state the factual basis for his argument that Code section 39-13-204 violates the single-subject and caption provisions of the Tennessee Constitution. Similarly, he does not state the factual basis for his argument relative to the trial court's instructing the jurors during sentencing that an element of felony murder was also an enhancement factor. *See Wooden*, 478 S.W.3d at 594. Even if the Defendant's allegations were true, the Defendant would not be entitled to relief because they would not render the sentence illegal and void. The Defendant is not entitled to relief on this basis.

Relative to the Defendant's contention regarding instructions on lesser included offenses of first degree felony murder, even if true, it would not render the Defendant's sentences illegal or void, only voidable. As a result, the claim is not properly raised under Rule 36.1, and the Defendant is not entitled to relief on this basis.

Based upon the foregoing and the record as a whole, the judgment of the trial court is affirmed.

ROBERT H. MONTGOMERY, JR., JUDGE