

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
MARCH SESSION, 1995

FILED

September 20, 1995

Cecil Crowson, Jr., Clerk

WILLIAM A. RANSOM,)
)
Appellant)
)
vs.)
)
STATE OF TENNESSEE,)
)
Appellee)

No. 01C01-9410-CR-00361

DAVIDSON COUNTY

Hon. **Ann Lacy Johns**, Judge

(Writ Of Habeas Corpus)

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OPINION FILED: _____

AFFIRMED

David G. Hayes
Judge

OPINION

The appellant, William A. Ransom, appeals as of right from an order entered in the Criminal Court of Davidson County denying his petition for a writ of habeas corpus .

After a review of the record, we affirm the judgment of the trial court.

On March 15, 1983 the appellant was convicted of robbery. Based upon this "triggering" offense and three prior felony convictions, a jury found him guilty of being an habitual criminal and the appellant received an enhanced sentence of life imprisonment. The underlying convictions included a 1969 guilty plea to armed robbery in Williamson County, a 1969 guilty plea to two charges of bank robbery in the Federal Court for the Middle District of Tennessee, and a 1975 guilty plea to conspiracy to commit bank robbery, also in the Federal Court for the Middle District of Tennessee.

On June 2, 1989, after his conviction and sentence were affirmed by this court and the Tennessee Supreme Court, the appellant filed a petition for post-conviction relief in the Criminal Court for Davidson County. In this petition, he alleged that the guilty pleas underlying his habitual criminal conviction were constitutionally invalid. On November 27, 1989, the Criminal Court for Davidson County dismissed the petition without appointing counsel and without conducting an evidentiary hearing. On appeal, this court, pursuant to our supreme court's holding in State v. Prince, 781 S.W.2d 846 (Tenn. 1989), remanded the case with instructions that the proceedings in the case be stayed to give the appellant the opportunity to test the constitutional validity of the guilty

pleas in the courts in which they occurred.¹ There is nothing in the record to suggest that the appellant has challenged his underlying guilty pleas in separate petitions.

Nevertheless, on July 27, 1993, the appellant filed the instant petition for the writ of habeas corpus in the Criminal Court for Davidson County. On March 31, 1994, appointed counsel filed an amended petition. On May 16, 1994, the trial court dismissed the appellant's petition without conducting an evidentiary hearing. In its order dismissing the petition, the trial court found that the petition did not state a claim for habeas corpus relief. Moreover, the trial court noted that because the appellant is confined in Wayne County, Tennessee, the court lacked jurisdiction under Tenn. Code Ann. § 29-21-105 (1980) to hear the appellant's claims. Finally, the trial court advised that the appellant's 1989 petition for post-conviction relief will remain in abeyance pending further action by the appellant.

The appellant now appeals from the trial court's order. The appellant contends, as he did in his 1989 post-conviction petition, that the guilty pleas underlying his conviction as an habitual criminal are invalid. Additionally, the appellant claims that his enhanced sentence under the Habitual Criminal Act violated the constitutional prohibition against double jeopardy.

"Without question, the procedural provisions of the habeas corpus

¹ In Prince, the Tennessee Supreme Court held the following: [I]t is incumbent upon a defendant to establish the invalidity of prior guilty pleas before he can procedurally launch a collateral attack on a subsequent habitual criminal sentence on that basis ... The petition must be filed in the court where the earlier conviction took place to attack the constitutional validity of the prior conviction.

781 S.W.2d at 852.

statutes are mandatory and must be followed scrupulously." Archer v. State, 851 S.W.2d 157, 165 (Tenn. 1993). Tenn. Code Ann. § 29-21-105 (1980) provides that an application for the writ of habeas corpus should be made to the court or judge in closest proximity to the applicant unless a sufficient explanation is submitted to the court. The trial court correctly noted that the appellant failed to comply with this statute.

Even assuming compliance with the procedural requirements of the habeas corpus statutes, it is a well-established principle of law that the remedy of habeas corpus is limited in its nature and its scope. Archer v. State, 851 S.W.2d 157, 161-162 (Tenn. 1993); Passarella v. State, 891 S.W.2d 619, 626 (Tenn. Crim. App. 1994). In Tennessee, habeas corpus relief is available only if "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)(citation omitted in original). The appellant has the burden of establishing either a void judgment or an illegal confinement by a preponderance of the evidence. Passarella, 891 S.W.2d at 627. If he successfully carries his burden, the appellant is entitled to immediate release. Id.

Habeas corpus relief is not available where an appellant alleges only that facially valid judgments may be voided upon the introduction of further evidence and appropriate findings. Mahammad v. State, No. 01C01-9501-CR-00019 (Tenn. Crim. App. at Nashville, July 6, 1995). In other words, habeas corpus relief is only available for void and not merely voidable judgments. Potts v. State, 833 S.W.2d 60, 62 (Tenn. 1992); Haynes v. State, No. 03C01-9402-CR-00054 (Tenn. Crim. App. at Knoxville, May 25, 1995); Leonard v. Criminal Court of Davidson County, 804 S.W.2d 891, 892 (Tenn. Crim. App. 1990). The

complaints made by the appellant in this case are not ones that would render the trial court judgment void but, rather, voidable.

First, as to the appellant's involuntary guilty plea claim, the Tennessee Supreme Court in Archer v. State, 851 S.W.2d 157, 162-164 (Tenn. 1993), concluded that, generally, involuntary guilty pleas are not subject to attack by petitions for issuance of the writ of habeas corpus.² Rather, judgments based upon invalid guilty pleas are voidable and should be challenged through a post-conviction relief petition. Id. at 164.

Second, as to the appellant's double jeopardy claim, this court notes that an allegation of double jeopardy, like an allegation of an involuntary guilty plea, does not render a conviction void, but merely voidable. Haynes v. State, No. 03C01-9402-CR-00054 (Tenn. Crim. App. at Knoxville, May 25, 1995). Moreover, "[s]ince habitual criminality is a status or a vehicle for the enhancement of punishment, incidental to and dependent upon the most recent conviction, as opposed to an independent crime, jeopardy does not attach." Pearson v. State, 521 S.W.2d 225, 227 (Tenn. 1975)(holding that the use of prior convictions as the basis for enhancing the penalty for a subsequent felony conviction, even though they have previously been used for such purpose on a prior habitual criminal conviction, does not violate the United States or Tennessee Constitutions). Thus, in State v. Archie, 639 S.W.2d 674, 676 (Tenn. Crim. App.), perm. to appeal denied, (Tenn. 1982), this court held that the imposition by the trial judge of a sentence for the triggering offense does not preclude conviction as an habitual criminal. While this court further noted that the better practice is for the trial judge to postpone entry of judgment on the

² The appellant's reliance in his brief upon the supreme court's decision in State ex rel. Anglin v. Mitchell, 575 S.W.2d 284 (Tenn. 1979), for the proposition that invalid guilty plea claims are proper claims for habeas corpus relief is misplaced. Anglin, insofar as the case stands for this proposition, was overruled by the Supreme Court in Archer, 851 S.W.2d at 162-64.

substantive count until the enhancement phase is complete, this practice is not mandatory. Id. Rather, the sentence for the triggering offense is simply rendered null and void by the enhancement proceeding and the imposition of a second sentence for the habitual criminal conviction. Id.

Since the appellant stated no ground for habeas corpus relief, his petition was properly dismissed by the trial court.

The allegations [of the appellant] in no way suggest that the challenged convictions are void due to the trial court's lack of jurisdiction over either the subject matter of the proceeding or over the person of the appellant. Furthermore, the [appellant] does not indicate that the record of the proceedings would show that the trial court's actions were unauthorized or that [his] sentence has expired and that the appellant is thus being restrained illegally.

Archer, 851 S.W.2d at 164.

The allegations in the appellant's petition are, on their face, grounds for post-conviction relief. See Tenn. Code Ann. § 40-30-105 (1990). As such, the trial court, in its discretion, could have treated the petition as one for post-conviction relief. See Tenn. Code Ann. § 40-30-108 (1990). However, the trial court chose not to do so. See Ray v. State, 489 S.W.2d 849, 850 (Tenn. Crim. App.), cert. denied, (Tenn. 1972)(a trial court is not required to treat a habeas corpus petition as a petition for post-conviction relief).

Accordingly, we conclude that the trial court properly dismissed the appellant's petition for the writ of habeas corpus. The judgment of the trial court is affirmed.

David G. Hayes, Judge

CONCUR:

Jerry Scott, Presiding Judge

Joseph M. Tipton, Judge