

OPINION

This is an appeal from an order of the trial court dismissing a petition for writ of habeas corpus. The trial judge found that the petition failed to state a claim appropriate for habeas corpus relief. The trial judge further found that the court did not have jurisdiction to entertain the petition as a petition for post-conviction relief, because the petition had not been filed in the court of the Defendant's conviction. We affirm the order of the trial court dismissing the petition.

The petition for writ of habeas corpus filed in the trial court alleges that the Defendant was sentenced in the Criminal Court of Hamilton County, Tennessee on May 11, 1990, as a Range I standard offender to concurrent sentences of eighteen years, ten years, and four years for the offenses of aggravated rape, rape, and incest. The Defendant's petition was filed in the Circuit Court for Wayne County, Tennessee on January 14, 1995. The petition alleges that the Defendant is being illegally and unconstitutionally restrained from his liberty because the parole board unconstitutionally denied him parole. The petition further alleges that the Defendant's guilty pleas were not voluntary, knowing, or intelligent and were entered in violation of his constitutional rights. The petition further alleges ineffective assistance of counsel at the time the Defendant entered his pleas of guilty. The petition requested the Defendant's immediate release and monetary damages for the Defendant's "continued unlawful restraint."

The State filed a response to the petition alleging that the grounds raised in the petition would not render the Defendant eligible for habeas corpus relief and that the statute of limitations had run if the petition were treated as one for post-conviction relief. The trial court dismissed the petition for its failure to state a valid claim for habeas

corpus relief and for lack of subject matter jurisdiction to treat the petition as one for post-conviction relief. It is from the order of the trial court dismissing the petition that the Defendant appeals.

The petition was styled "petition for writ of habeas corpus." It named as Defendants the State of Tennessee, the warden of the institution in which the Defendant was incarcerated, the Chairman of the Tennessee Board of Paroles, the Commissioner of Correction, and the Director of the Sex Offender Program for the Tennessee Department of Correction.

The writ of habeas corpus, codified at Tennessee Code Annotated sections 29-21-101 to 130 is to be issued only in the case of a void judgment or to free a prisoner held after the term of imprisonment has expired. Tenn. Code Ann. § 29-21-101; Potts v. State, 833 S.W.2d 60, 62 (Tenn. 1992). It is clear from this record that the petitioner is not entitled to habeas corpus relief.

A trial court is not bound by the title of a pleading, but has the discretion to treat the pleading according to the relief sought. Norton v. Everhart, 895 S.W.2d 317, 319 (Tenn. 1995). While this petition could be viewed as a petition for post-conviction relief, such a petition must be filed in the court where the conviction occurred. Tenn. Code Ann. § 40-30-103 (repealed 1995).¹ The petition herein was not filed in the county or judicial district in which the conviction occurred. The trial court thus did not have jurisdiction to entertain a petition for post-conviction relief from this Defendant. The trial court also did not have authority to transfer this case to the court in which the Defendant was convicted. Norton, 895 S.W.2d at 320. Furthermore, it appears that

¹Current law is codified at Tenn. Code Ann. § 40-30-204.

a petition for post-conviction relief was barred by the three-year statute of limitations applicable to this action. Tenn. Code Ann. § 40-30-102 (repealed 1995).²

The petition could also have been viewed as a petition for a common law writ of certiorari. Tenn. Code Ann. § 27-8-102. Parole Board decisions are reviewable only by a petition for writ of certiorari which must be filed within sixty days. Thandiwe v. Traugher, No. 01-A-01-9407-CH-00313, Davidson County (Tenn. Ct. App., Nashville, filed Nov. 2, 1994), perm. to appeal denied, (Tenn., filed Feb. 21, 1995). The petition herein alleges that the Defendant was denied parole in March of 1993. The petition herein was filed January 14, 1995. The sixty-day statute of limitations for filing a petition for a writ of certiorari had expired long before the filing of the instant petition. This is clearly ascertainable from the face of the petition itself. Furthermore, the Defendant filed his petition in the wrong court. Writs involving state agencies or officers must be filed in the county which is the official situs of the agency's head office. Tennessee Real Estate Comm'n v. Potts, 221 Tenn. 585, 591, 428 S.W.2d 794, 797 (1968). Only the courts of Davidson County have the necessary subject matter jurisdiction to review the decisions of a state agency. Brigham v. Lack, 755 S.W.2d 469, 471 (Tenn. Crim. App.), perm. to appeal denied, id. (Tenn. 1988) see also Morris v. Snodgrass, 871 S.W.2d 484, 485 (Tenn. Ct. App. 1993). Again, the trial court had no authority to transfer this case to Davidson County. Norton, 895 S.W.2d at 320.

Additionally, even if the petition had been addressed on the merits, the action of the parole board in releasing prisoners is not reviewable if done according to law. Tenn. Code Ann. § 40-28-115(c); Brigham v. Lack, 755 S.W.2d 469, 471 (Tenn. Crim. App.), perm. to appeal denied, id. (Tenn. 1988). The scope of review under the common law writ is very narrow and covers only an inquiry into whether the Parole

²Current law is codified at Tenn. Code Ann. § 40-30-202.

Board has exceeded its jurisdiction or is acting illegally, fraudulently, or arbitrarily. Powell v. Parole Eligibility Board, 879 S.W.2d 871, 873 (Tenn. Ct. App.), perm. to appeal denied, id. (Tenn. 1994). Not the correctness of the decision, but only the manner in which it was reached is reviewable. Id. Merely attacking the board's action by alleging conclusory terms such as "arbitrary" and "capricious" will not warrant the issuance of the writ. Id. Thus, if the board has reached the decision in a lawful manner, the decision is simply not reviewable. Id.; see Brigham, 755 S.W.2d at 471.

For the various reasons stated herein, we conclude that the trial judge did not err in dismissing the petition. The judgment of the trial court is affirmed.

DAVID H. WELLES, JUDGE

CONCUR:

PAUL G. SUMMERS, JUDGE

JOSEPH M. TIPTON, JUDGE