

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
APRIL SESSION, 1997

FILED

June 24, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

PAUL G. HULL,)
)
 Appellant)
)
 vs.)
)
 STATE OF TENNESSEE)
 AND JIMMY HARRISON,)
 WARDEN,)
)
 Appellant)

No. 02C01-9605-CC-00183

LAUDERDALE COUNTY

Hon. JOSEPH H. WALKER, Judge

(Habeas Corpus)

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OPINION FILED: _____

AFFIRMED

David G. Hayes
Judge

OPINION

The appellant, Paul G. Hull, appeals from the Lauderdale County Circuit Court's denial of his application for writ of habeas corpus. He is currently confined at the Cold Creek Correctional Facility, where he is serving an eight year sentence for a 1990 aggravated assault conviction from Coffee County.¹ On March 8, 1996, the appellant filed the instant petition for writ of habeas corpus. The trial court dismissed the appellant's petition, finding that it failed to state a cognizable claim for habeas corpus relief. In this appeal, the appellant challenges the trial court's summary dismissal of his application for writ of habeas corpus.

After review, the judgment of the trial court is affirmed.

The appellant's eight year sentence from Coffee County is the result of a plea agreement reducing a charge of aggravated rape to that of aggravated assault. Pursuant to the plea agreement, seven years of the appellant's eight year sentence was suspended. The appellant's original eight year sentence was subsequently reinstated following revocation of probation. See State v. Hull, No. 01C01-9406-CC-00200 (Tenn. Crim. App. at Nashville, Mar. 15, 1995). The appellant contends that he is entitled to habeas corpus relief based upon the following allegations: (1) the trial court denied him the opportunity to amend his habeas corpus petition prior to dismissal; (2) his three year sentence for receiving stolen property had already expired at the time his suspended sentence was revoked; (3) incorrect information has been placed in his prison personnel file, including erroneous information relating to jail credit for time previously served; (4) he was supervised as a sex offender while on probation,

¹This sentence was ordered to run concurrently with a previous three year sentence resulting from the appellant's guilty plea to receiving stolen property.

although he was not convicted of a sex offense; and (5) federal law, rather than state law, governs state habeas corpus proceedings.

The State contends that, even assuming the appellant's allegations to be correct, he has, nevertheless, failed to state a cognizable claim upon which habeas corpus relief may be granted. Moreover, the State argues that it is irrelevant whether his three year sentence for stolen property expired because his current confinement stems from his eight year sentence for aggravated assault. After reviewing the pleadings in this case and the State's memorandum of law in support of respondent's motion to dismiss, the trial court summarily dismissed the appellant's petition for writ of habeas corpus.²

I. Denial of Habeas Corpus Relief

In Tennessee, habeas corpus relief is only available when a conviction is void because the convicting court was without jurisdiction or authority to sentence a defendant, or that a defendant's sentence has expired and he is being illegally restrained. Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993). As the trial court properly concluded, the appellant's petition does not allege either of these grounds for relief. Rather, the petition submits that the judgment is void and the sentence is illegal because (1) the State failed to comply with the terms of his plea agreement by classifying him as a sex offender³ and (2) the trial

²Attached to the State's memorandum was the affidavit of the Manager of Sentence Information Services, Tennessee Department of Correction, which reflects the following: "Paul G. Hull was convicted in Coffee County, Tennessee, February 16, 1990, to a total of 8 years in Case #23431 [aggravated assault]. The expiration date is December 27, 1999.

³This issue was affirmed by this court on direct appeal. See Hull, No. 01C01-9406-CC-00200. "It is a fundamental principal of law that the remedy of habeas corpus may not be used to resurrect and relitigate matters which have been raised and determined in a . . . direct appeal unless a change in the law renders the petitioner's conviction void." Holt v. State, No. 01C01-9110-CC-00321 (Tenn. Crim. App. at Nashville, June 12, 1992) (citing Tenn. Code Ann. § 40-30-105).

court failed to give him credit for time previously served.⁴ Neither claim is a cognizable ground for relief in a state habeas corpus proceeding. Accordingly, the trial court properly dismissed the petition. Passarella v. State, 891 S.W.2d 619, 627 (Tenn. Crim. App.), perm. to appeal denied, (Tenn. 1994).

The appellant also contends, as a basis for relief, that his three year sentence for receiving stolen property had expired at the time of his probation revocation. The record indicates that the appellant's eight year sentence for aggravated assault, on which he was revoked, will not expire until December, 1999. This contention is without merit.

II. Denial of Motion to Amend Writ

Next, the appellant contends that the trial court should have granted him the opportunity to amend his writ of habeas corpus. The appellant filed the instant petition on March, 8, 1996. On May 1, 1996, he filed a motion to amend his petition. Consequently, the trial court issued an order denying relief on May 3, 1996.

Whether a petitioner in a habeas corpus proceeding should be permitted to amend his petition is a matter which addresses itself to the sound discretion of the trial court. This Court will not interfere with the exercise of this discretion unless it appears on the face of the record that it has been abused. Weatherly v. State, 704 S.W.2d 730, 732-733 (Tenn. Crim. App. 1985); State ex rel. Hathaway v. Henderson, 432 S.W.2d 503, 506 (Tenn. Crim. App. 1968). As a general rule, a trial court does not abuse its discretion in denying a motion to amend a petition when the petitioner does not explain the nature of the amendment.

Holt v. State, No. 01C01-9110-CC-00321 (Tenn. Crim. App. at Nashville, June

⁴"After the trial court has lost jurisdiction and the petitioner is placed within the custody of the Department of Correction, an agency of the state government, 'the proper avenue by which to address sentence reduction credits is through the avenues of the Administrative Procedures Act, Tenn. Code Ann. § 4-5-101 et seq.'" State v. Lyons, No. 01C01-9506-CC-00198 (Tenn. Crim. App. at Nashville, June 20, 1996), perm. to appeal denied, concurring in results only, (Tenn. Nov. 25, 1996) (citing Vaughan v. State, No. 01C01-9308-CR-00258 (Tenn. Crim. App. at Nashville, Feb. 24, 1994)).

12, 1992). The appellant, in the instant case, failed to specify the nature of the amendment. Moreover, there is no evidence that the trial court abused its discretion by not granting the appellant's motion to amend. This issue is without merit.

III. Application of State Law to Habeas Corpus Proceeding

The appellant argues that he is entitled to have federal law govern his state writ for habeas corpus relief. Specifically, he contends that "[t]o prevail on a claim for habeas corpus, [a] state prisoner must show that his detention violates the Constitution, a Federal statute, or treaty." Clearly, the appellant is attempting to expand the scope of habeas corpus in Tennessee to that which applies in the federal courts. See 28 U.S.C.S. Sec. 2241 *et seq.*

Tennessee courts have consistently construed the scope of review by habeas corpus very strictly. Voss v. Raney, No. 02C01-9501-CC-00022 (Tenn. Crim. App. at Jackson, Aug, 2, 1995), perm. to appeal denied, (Tenn. Nov. 20, 1995). Again, state habeas corpus relief in Tennessee is only available when the convicting court was without jurisdiction to sentence a defendant, or that a defendant's sentence has expired. Archer, 851 S.W.2d at 164. The strictness of Tennessee law is a marked contrast to federal habeas corpus proceedings which offer a broad basis for review. Voss, No. 02C01-9501-CC-00022. Moreover, even if state habeas relief in Tennessee was expanded, although Archer prohibits such, see Mosley v. State, No. 01C01-9501-CR-00016 (Tenn. Crim. App. at Nashville, July 20, 1995), perm. to appeal denied, (Tenn. Nov. 27, 1995), our state courts would not be bound to follow the decisions of lower federal courts. See Rotunda & Nowak, *Treatise on Constitutional Law: Substance & Procedure*, 2nd, § 1.6(c). "We are not obligated to incorporate federal habeas corpus limits and laws into our state habeas corpus procedure." Turks v. State,

No. 02C01-9502-CR-00035 (Tenn. Crim. App. at Jackson, Jan. 3, 1997). This issue is without merit.

IV. Conclusion

After review of the appellant's petition for writ of habeas corpus, we agree with the trial court's finding that the appellant has failed to state a cognizable ground for relief under Tennessee habeas corpus proceedings. Accordingly, the trial court's dismissal of the appellant's petition is affirmed.

DAVID G. HAYES, Judge

CONCUR:

JOSEPH M. TIPTON, Judge

WILLIAM M. BARKER, Judge