

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
July 25, 2023 Session

FILED
09/20/2023
Clerk of the
Appellate Courts

STATE OF TENNESSEE v. AMANDA JEAN PHILLIPS

**Appeal from the Criminal Court for Scott County
No. 11672A Zachary R. Walden, Judge**

No. E2022-01699-CCA-R3-CD

The Defendant, Amanda Jean Phillips, appeals the trial court’s denial of her motion to “Set Aside, Amend and/or Correct Improper and Unlawful Judgments.” The Defendant argues (1) that her judgments are void due to noncompliance with the statutes and rules governing the entry of judgment forms and (2) that she is entitled to relief pursuant to Tennessee Rule of Criminal Procedure 36. Following our review, we have determined that we lack jurisdiction to hear the Defendant’s voidness arguments and that the Defendant has waived review of her Rule 36 claim. Accordingly, the appeal is dismissed.

Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed

KYLE A. HIXSON, J., delivered the opinion of the court, in which JOHN W. CAMPBELL, SR., and TOM GREENHOLTZ, JJ., joined.

David A. Stuart, Clinton, Tennessee, for the appellant, Amanda Jean Phillips.

Jonathan Skrmetti, Attorney General and Reporter; Edwin Alan Groves, Jr., Assistant Attorney General; Jared R. Effler, District Attorney General; and David Pollard and Apryl Bradshaw, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

I. FACTUAL AND PROCEDURAL HISTORY

A Scott County jury convicted the Defendant of one count of aggravated kidnapping, two counts of especially aggravated kidnapping, two counts of aggravated child neglect, and one count of carjacking. Following a sentencing hearing on May 19, 2022, the trial court sentenced the Defendant to an effective sentence of thirty years. On June 2, 2022, the trial court clerk filed judgment forms which had not been signed by defense counsel. Nor did the clerk certify on the judgments that they had been “made

available” to any party who had not signed the documents. The Defendant did not file a motion for new trial. On August 5, 2022, defense counsel filed a motion to “Set Aside, Amend and/or Correct Improper and Unlawful Judgments.” The trial court denied the motion following a hearing on October 17, 2022, finding that it lacked jurisdiction to amend the final judgments. The Defendant appeals this denial, citing the circumstances surrounding the filing of the judgment documents.

In her motion of August 5, 2022, the Defendant alleged that defense counsel had called the trial court clerk’s office on numerous occasions following her sentencing hearing to determine whether the judgments in the case had been filed. She stated that the clerk’s office informed defense counsel multiple times that the judgments had not been filed.¹ The Defendant alleged, however, that on July 19, 2022, defense counsel called the clerk’s office again and was informed at that time that the judgments had in fact been filed on June 2, 2022. The Defendant stated in her motion that defense counsel was unaware of the filing of the judgments until July 19, 2022, that counsel had not signed the documents nor received a copy to review prior to their entry, and that the trial court clerk did not certify on the face of the judgments that they had been “made available” to any party who had not signed the documents.

The Defendant prayed in her motion that the judgments “should be set aside and amended or corrected so that proper judgments can be entered bearing . . . the signature of [the D]efendant’s attorney or absent such signature, a completed certification by the clerk that copies of the same were provided prior to entry.” If granted relief, the Defendant averred, defense counsel would “be in a position to timely file a motion for new trial” on her behalf.

The Defendant pleaded that she was entitled to this relief pursuant to her “substantive and procedural rights to due process, equal protection of the law, and to have justice administered in accordance with the law of the land, within the meaning of the Constitution of Tennessee, and in furtherance of the statutes and rules enacted with a view to securing these rights.” The Defendant cited to Tennessee Code Annotated section 40-35-209, which sets forth the information that must be included in uniform judgment documents, as well as Tennessee Supreme Court Rule 17, which incorporates the uniform judgment document form described in section 209. The Defendant also relied upon Rule 9(c) of the purported Local Rules of Practice of the Eighth Judicial District, which she quoted in pertinent part: “Each party shall have the opportunity to review, order [sic] and approve the contents of orders prior to entry. Orders for cases resolved by trial or court

¹ Affixed to the Defendant’s motion was a call log from defense counsel’s office purporting to document these calls. The call log was not entered as an exhibit to the hearing on the Defendant’s motion.

ruling, where appeal is sought, will not be entered unless all parties have approved the order over the signature of the parties or the respective attorneys.”

The State filed a response in opposition to the Defendant’s motion. The State alleged that the prosecutor sent a text message to defense counsel on May 20, 2022, indicating that the judgments were ready for review and asking how defense counsel would like for them to be sent. The State further alleged that the prosecutor emailed the draft judgments to defense counsel and his assistant on that same day. The State averred that the prosecutor received no response from defense counsel to either of those communications. Also, the State alleged that file-stamped copies of the judgments were emailed to defense counsel on June 7, 2022.

The trial court heard the Defendant’s motion on October 17, 2022. Neither party presented proof. Defense counsel restated the factual allegations set forth in the Defendant’s motion. Counsel argued that the lack of service prior to the entry of the judgments, coupled with the lack of his signature on the judgments, violated the local rule² and that such violation rendered the judgments void. Defense counsel agreed with the trial court that the judgments were final and that the trial court no longer had jurisdiction to consider a motion for new trial but argued that the judgments would not be final if they were void. The trial court asked defense counsel what authority indicated that “lack of service makes the judgment void to the point that” the trial court still had jurisdiction over the case. Defense counsel cited no such authority but replied, “My argument is basically based on the logic of the rules and the fact that they have an absolute constitutional right to have their new trial motion filed and heard and then to . . . appeal as of right[.]” Defense counsel added that it was “probably a mistake for us to phrase this as a motion to amend or correct the judgment[.]” Defense counsel concluded by arguing that he was unable to file a timely motion for new trial because the judgments were not entered properly according to local rules and that the judgments were thus void.

The State responded that multiple attempts were made to make defense counsel aware of the judgments. Specifically, at the May 19, 2022 sentencing hearing, a motion for new trial hearing was scheduled for July 22, with the understanding that a motion for a new trial would be filed between May 19 and July 22. The prosecutor said that on May 20, she sent defense counsel a text message informing him that the judgments were ready and asked how defense counsel would prefer to receive them. While the prosecutor initially

² At the hearing, the trial court questioned the validity of the local rule relied upon by the Defendant. The trial court stated its belief that the local rules cited by the Defendant were drafted by the predecessor judge but that it did not believe that “those local rules were ever formally adopted under Supreme Court Rule 18.” *See* Tenn. Sup. Ct. R. 18 (setting forth the requirements for the formal adoption of local rules of practice).

stated at the hearing that she did not receive a response from defense counsel at that time, she referenced a text message from defense counsel, which she had previously overlooked, wherein defense counsel confirmed that he had received her previous message.³

On May 20, that same day, the prosecutor sent a copy of the judgments to both defense counsel and defense counsel's assistant⁴ and asked for defense counsel's signature on the judgments. On June 2, the prosecutor still had not received a substantive response from defense counsel, so she sent a copy of the judgments to the trial judge to sign. The prosecutor said that after the judgments were entered with the clerk's office on June 2, copies of the signed judgments were emailed to defense counsel. The prosecutor agreed that the clerk had not certified the judgments as having been provided to counsel prior to filing but stated that she had made multiple attempts to contact defense counsel. The prosecutor said that defense counsel did not appear at the July 22 court date and that she did not receive any communication from defense counsel until July 26 or 27.

The trial court stated that it did not have jurisdiction to amend the judgments unless they were void. The trial court appreciated the State's good faith efforts to contact defense counsel but found that defense counsel's confirmation of receiving the prosecutor's text message of May 20 was "immaterial" because the operative question, according to the trial court, was whether actual service was accomplished. The trial court found that it had no "reason to doubt" that defense counsel no longer had access to the email address where the judgments were originally sent but lamented that it had not been provided with legal authority in the pleadings or at the hearing which would indicate that the lack of actual service rendered the judgments void. Ultimately, the trial court ruled that the judgments were not void, that the thirty-day period for filing a motion for new trial had lapsed, and that it did not have jurisdiction to hear the Defendant's motion. The trial court filed a written order memorializing its ruling.

The Defendant filed a timely appeal of the trial court's denial of her motion.

II. ANALYSIS

³ These text messages were not included in the appellate record. Defense counsel did not confirm nor deny that he had sent this confirmatory message.

⁴ According to the State's written response, the judgments were sent via email. At the hearing, defense counsel stated that the email was sent to an old account to which he no longer had access.

On appeal, the Defendant argues that the failure to comply with Rule 9 of the Local Rules of Practice for the Eighth Judicial District renders her judgments void. She argues that the trial court utilized the uniform judgment document form authorized by Tennessee Supreme Court Rule 17, and prepared in furtherance of the requirements of Tennessee Code Annotated section 40-35-209(e)(1) for such documents, but failed to comply with this rule and statute by not including defense counsel's signature nor having a certificate signed by the trial court clerk reflecting that a copy of the judgment was made available to defense counsel prior to filing. The Defendant argues that the error was compounded by the trial court clerk's office repeatedly informing defense counsel that the judgments had not been filed.

The Defendant also argues that relief is available under Tennessee Rule of Criminal Procedure 36, which governs clerical mistakes, because the clerk's failure to obtain defense counsel's signature or to certify that the judgments had been made available to defense counsel was "literally a 'clerical mistake.'" The Defendant argues that the "plain language" of Rule 36 "provides a useful tool to remedy this intolerable injustice."

The State argues that the trial court did not err by denying the Defendant's motion to set aside, amend, or correct improper and unlawful judgments because the judgments are final, the judgments are not void, and the judgments are free of clerical errors. The State also argues that the Defendant had other potential remedies, including a direct appeal from her convictions requesting a waiver of the timeliness of her notice of appeal or a post-conviction claim wherein she could seek the remedy of a delayed motion for new trial. The State concedes that a writ of habeas corpus is an available avenue to collaterally attack a final judgment but notes that the Defendant failed to follow the proper procedures for seeking habeas corpus relief. The State contends that the Defendant's argument regarding Rule 36 is waived because she failed to raise it in the trial court.

Tennessee Code Annotated section 40-35-209(e) sets forth the requirements for filing a uniform judgment document following a criminal conviction. The Code provides, "[I]f not signed by the parties, the clerk shall make a copy of the document available to the parties before entry by the court[.]" Tenn. Code Ann. § 40-35-209(e)(1). The Code then lists the information that shall be included in the uniform judgment document. *Id.* § 40-35-209(e)(1)(A)-(S). Tennessee Supreme Court Rule 17 provides that the uniform judgment document "shall contain all of the information required by Tenn. Code Ann. § 40-35-209(e)." The uniform judgment document form incorporated into Rule 17 contains language allowing the trial court clerk to "certify that, before entry by the court, a copy of this judgment was made available to the party or parties who did not provide a signature above." The Tennessee Rules of Criminal Procedure provide, "A judgment of conviction shall be signed by the judge and entered by the clerk." Tenn. R. Crim. P. 32(e)(1).

At the outset, we must note the paltry state of the record in this case. While each party made several factual allegations in their respective pleadings, neither party offered proof of these allegations at the hearing on the motion. Further, the parties referenced emails and text messages during the hearing, at one point reviewing a copy of an email sent by the prosecutor's office to defense counsel. At another point, the prosecutor referenced a text message wherein she claimed that defense counsel acknowledged having received a prior text message informing him that the judgments were ready for his review. Copies of these communications were not entered as exhibits or, if they were, they were not included in the record on appeal. If we had reached the merits of the Defendant's appeal, the state of this record would make it difficult, if not impossible, to review whether the judgments had been made "available" to defense counsel prior to their filing as required by section 40-35-209(e)(1).

As another initial matter, we note that the Defendant is not appealing the convictions or sentences that resulted in the judgments filed on June 2, 2022. The Defendant failed to file a motion for new trial and raises no direct appeal claims in this court. Moreover, the Defendant makes no requests for relief under Tennessee Rule of Appellate Procedure 4, which would allow this court to waive timely filing of the notice of appeal as to the June 2 judgments. *See* Tenn. R. App. P. (4)(a) (stating that "in all criminal cases the 'notice of appeal' document is not jurisdictional and the timely filing of such document may be waived in the interest of justice"); *State v. Dodson*, 780 S.W.2d 778, 780 (Tenn. Crim. App. 1989) (noting that the failure to file a timely motion for new trial does not deprive this court of jurisdiction). Instead, the Defendant is appealing the trial court's denial of her "Motion to Set Aside, Amend and/or Correct Improper and Unlawful Judgments." Because "parties in criminal cases do not always have an appeal as of right under the Rules of Appellate [P]rocedure[,]" we must first determine whether we have jurisdiction to hear an appeal of this nature. *See State v. Lane*, 254 S.W.3d 349, 352 (Tenn. 2008).

Tennessee Rule of Appellate Procedure 3(b) addresses the availability of appeal as of right by a defendant in criminal actions. Rule 3(b) provides:

In criminal actions an appeal as of right by a defendant lies from any judgment of conviction entered by a trial court from which an appeal lies to the Supreme Court or Court of Criminal Appeals: (1) on a plea of not guilty; and (2) on a plea of guilty or nolo contendere, if the defendant entered into a plea agreement but explicitly reserved the right to appeal a certified question of law dispositive of the case pursuant to and in compliance with the requirements of Rule 37(b)(2)(A) or (D) of the Tennessee Rules of Criminal Procedure, or if the defendant seeks review of the sentence and there was no

plea agreement concerning the sentence, or if the issues presented for review were not waived as a matter of law by the plea of guilty or nolo contendere and if such issues are apparent from the record of the proceedings already had. The defendant may also appeal as of right from an order denying or revoking probation; an order denying a motion for reduction of sentence pursuant to Rule 35(d), Tennessee Rules of Criminal Procedure; an order or judgment pursuant to Rule 36 or Rule 36.1, Tennessee Rules of Criminal Procedure; from a final judgment in a criminal contempt, habeas corpus, extradition, or post-conviction proceeding; from a final order on a request for expunction; and from the denial of a motion to withdraw a guilty plea under Rule 32(f), Tennessee Rules of Criminal Procedure.

When interpreting Rule 3, we follow the maxim of *expressio unius est exclusion alterius*, meaning “the expression of one thing implies the exclusion of all things not mentioned.” *Lane*, 254 S.W.3d at 353 (quoting *State v. Adler*, 92 S.W.3d 397, 400 (Tenn. 2002)). Thus, appeals as of right lie only from the judgments or orders that are specifically enumerated in Rule 3. *See id*; *State v. Bobo*, 672 S.W.3d 299, 302 (Tenn. Crim. App. 2023) (“A defendant in a criminal case has no appeal as of right unless it is enumerated in Rule 3(b).”).

The language of Rule 3 does not provide an appeal as of right from a trial court’s denial of a motion to “set aside” or “amend” a judgment due to an alleged noncompliance with Code section 40-35-209(e) or a local rule. Therefore, we lack jurisdiction to hear this aspect of the Defendant’s appeal. *See State v. Bryant*, No. M2005-02356-CCA-R3-CD, 2006 WL 2956508, at *2 (Tenn. Crim. App. Oct. 13, 2006) (holding that Rule 3 did not provide an appeal as of right of the trial court’s denial of a “Motion to Set Aside Amended Judgment”). While Rule 3 allows for the appeal as of right of habeas corpus judgments, the Defendant’s motion in the trial court did not comply with the strict procedural requirements for filing a petition for writ of habeas corpus. *See Tenn. Code Ann. § 29-21-107*. We therefore decline to review it as such. *See Bryant*, 2006 WL 2956508, at *2.

In her brief, however, the Defendant also asks for relief pursuant to Tennessee Rule of Criminal Procedure 36, which provides:

After giving any notice it considers appropriate, the court may at any time correct clerical mistakes in judgments, orders, or other parts of the record, and errors in the record arising from oversight or omission. Upon filing of the corrected judgment or order, or upon the court’s denial of a motion filed pursuant to this rule, the defendant or the state may initiate an appeal as of right pursuant to Rule 3, Tennessee Rules of Appellate Procedure.

This court has jurisdiction to consider the Defendant’s claim regarding Rule 36. However, the Defendant has waived review of this issue because she failed to raise it in the trial court. While she included the word “correct” in the title of her motion, the Defendant did not reference Rule 36 in her motion, nor did she argue that her judgments should be corrected under its authority. During the hearing, defense counsel argued about the alleged voidness of the judgments rather than their need for correction under Rule 36. Even if the Defendant had raised a viable Rule 36 claim in the trial court, she abandoned it when defense counsel informed the trial court that it was “probably a mistake for us to phrase this as a motion to amend or correct the judgment[.]” Our jurisdiction extends only to those issues that “ha[ve] been formulated and passed upon in some inferior tribunal.” *State v. Bristol*, 654 S.W.3d 917, 925 (Tenn. 2022) (quoting *Fine v. Lawless*, 205 S.W. 124, 124 (Tenn. 1918)). The Defendant has waived review of her Rule 36 issue due to her failure to raise it in the trial court.

In any event, we fail to see how Rule 36 warrants the relief requested by the Defendant. Rule 36 allows the correction of “errors in the record arising from oversight or omission.” In this case, the record sets forth exactly what the Defendant alleges actually occurred in the trial court—*i.e.*, that the judgments were not signed by her counsel and were not made available to her prior to filing. Taking the Defendant’s version of events as true, the record accurately reflects what occurred in the trial court, and there is nothing to correct under Rule 36.⁵

III. CONCLUSION

We lack jurisdiction to consider the Defendant’s voidness arguments, and the Defendant has waived review of her issue regarding Tennessee Rule of Criminal Procedure 36. Accordingly, the appeal is dismissed.

⁵ Of course, if the trial court clerk did make the judgments available to the parties before filing, the absence of the clerk’s signature would be a clerical mistake that could be corrected through Rule 36. However, as the Defendant presents her claim, the judgments accurately represent what occurred. An assertion that the trial court clerk’s *actions* did not comply with section 40-35-209(e) is not the same as a claim alleging that the judgment contains a clerical mistake when it accurately shows what occurred.

KYLE A. HIXSON, JUDGE