

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs April 21, 2026

FILED

05/05/2026

Clerk of the
Appellate Courts

WAYNARD Q. WINBUSH v. STATE OF TENNESSEE

**Appeal from the Criminal Court for Knox County
No. 130808 G. Scott Green, Judge**

No. E2025-01232-CCA-R3-HC

Petitioner, Waynard Q. Winbush, appeals the dismissal of his pro se petition for writ of habeas corpus. After a thorough review of the record and applicable authorities, we affirm the judgment of the habeas corpus court.

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

JILL BARTEE AYERS, J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER, P.J., and TIMOTHY L. EASTER, J., joined.

Waynard Q. Winbush, Knoxville, Tennessee, Pro Se.

Jonathan Skrmetti, Attorney General and Reporter; Courtney N. Orr, Deputy Attorney General; Charme P. Allen, District Attorney General; for the appellee, State of Tennessee.

OPINION

Factual and Procedural Background

Petitioner was charged, along with multiple co-defendants, in eighteen counts of a twenty-six-count presentment, fourteen of which charged him with drug offenses committed within a drug-free zone. Of the fourteen counts, eight were conspiracy to commit drug offenses. Following a jury trial, Petitioner was convicted of ten of the counts, including count one, conspiracy to possess 150 grams or more of heroin with intent to sell within a drug-free zone. T.C.A. §§ 39-12-103; 39-17-417(a)(4), (j)(1); 39-17-432(b)(1)

(2013).¹ The trial court sentenced Petitioner for count one as a Range I offender to twenty years with the first fifteen years to be served at one hundred percent and the final five years to be served at thirty percent. Petitioner's total effective sentence with the other convictions was twenty-three years.

On direct appeal, Petitioner raised a number of issues, including eleven claims of ineffective assistance of trial counsel. Because the trial court instructed the jury on offenses different from those charged in counts three and four, and trial counsel failed to object, this court held that trial counsel's performance was deficient and prejudicial as to those two convictions, and reversed and vacated the convictions in counts three and four. *See State v. Winbush*, No. E2018-02136-CCA-R3-CD, 2020 WL 1466307, at *15 (Tenn. Crim. App. Mar. 24, 2020), *perm. app. denied* (Tenn. Aug. 6, 2020). This court affirmed the remaining eight convictions, finding no merit in Petitioner's ineffective assistance of counsel claims as to those counts nor in his stand-alone claim of cumulative error. *Id.* at *1-27.

Petitioner then filed his first petition for writ of habeas corpus alleging that the 2020 amendments to Tennessee Code Annotated section 39-17-417, violated his rights to equal protection, due process, and ex post-facto clauses. *Winbush v. State*, No. E2020-01557-CCA-R3-HC, 2021 WL 3046648, at *1 (Tenn. Crim. App. July 20, 2021), *no perm. app. filed*. This court affirmed the summary dismissal of this habeas corpus petition on the grounds that Petitioner failed to state a cognizable claim for habeas corpus relief. *Id.* at *3.

In June 2025, Petitioner filed the instant petition for habeas corpus relief, asserting that the trial court lost jurisdiction when counts three and four were vacated and dismissed on direct appeal. He contended that because "a prerequisite to a court having jurisdiction is effective counsel to a defendant," the finding of ineffective assistance of counsel on counts three and four on direct appeal rendered his remaining eight convictions void. He further argued that the "proper" remedy after this court found his trial counsel ineffective for failing to object to the erroneous jury instruction for counts three and four was a new trial, not a dismissal of those counts. The habeas corpus court found that because Petitioner's sentence, including the twenty-year effective sentence for the four remaining conspiracy convictions, was within the proper range for Class A felony convictions, had not expired, and the corresponding judgments of convictions were facially valid, Petitioner had presented no valid claim for habeas corpus relief.²

¹ At the time of the offenses, the drug-free zone enhancement required the conduct to occur within one thousand feet of a school zone to trigger a higher felony classification; the statute has since been amended to reduce that distance to five hundred feet. *Id.* § 39-17-432(b)(1)(B) (2020).

² According to a footnote in the trial court's order, Petitioner was released to federal authorities after the dismissal of a case unrelated to this appeal. His federal custody does not however, prevent him from challenging the state judgments at issue because his sentence has not expired. *See Hickman v. State*, 153

Petitioner appealed the summary dismissal order, and the appeal is properly before us.

Analysis

Petitioner maintains on appeal that this court's decision on direct appeal finding trial counsel's performance deficient and prejudicial as to counts three and four, rendered all of his convictions "absolutely void" and simultaneously divested the trial court of jurisdiction. He adds that this court awarded an improper remedy when vacating and dismissing counts three and four.

The State responds that the trial court properly dismissed the petition because Petitioner failed to present a colorable claim for habeas corpus relief. The State contends that Petitioner received the proper remedy on his ineffective assistance of counsel claim on direct appeal, and his attempt to use habeas corpus to expand on that relief is unsupported by the record and unavailable in habeas corpus as a matter of law.

The determination of whether to grant habeas corpus relief is a question of law and our review is de novo with no presumption of correctness to the lower court's findings. *See Summers v. State*, 212 S.W.3d 251, 262 (Tenn. 2007). The Tennessee Constitution guarantees a convicted criminal defendant the right to seek habeas corpus relief. *See* Tenn. Const. art. I, § 15. However, the grounds upon which habeas corpus relief will be granted are very narrow. *Taylor v. State*, 995 S.W.2d 78, 83 (Tenn. 1999). A petition for habeas corpus relief may only be granted when the judgment is shown to be void, rather than merely voidable. *Id.* A judgment is void only when it appears upon the face of the judgment or the record of the proceedings upon which the judgment is rendered that the convicting court was without jurisdiction or authority to sentence a defendant or that a defendant's sentence has expired. *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993). On the other hand, a voidable judgment or sentence is one which is facially valid and which requires evidence beyond the face of the judgment or the record of the proceedings to establish its invalidity. *Taylor*, 995 S.W.2d at 83. A petitioner bears the burden of establishing a void judgment or illegal confinement by a preponderance of the evidence. *Hogan v. Mills*, 168 S.W.3d 753, 755 (Tenn. 2005). Moreover, it is permissible for a court to summarily dismiss a habeas corpus petition, without the appointment of counsel and without an evidentiary hearing, if there is nothing on the face of the petition to indicate that the convictions or sentences addressed therein are void. T.C.A. § 29-21-109.

S.W.3d 16, 22-24 (Tenn. 2004) (holding that a petitioner in federal custody may still challenge a Tennessee conviction).

Here, the habeas corpus court properly dismissed the petition because Petitioner failed to raise a colorable claim for relief. This court’s prior finding of ineffective assistance of counsel as to counts three and four does not render Petitioner’s remaining convictions void. Petitioner’s assertion that the dismissal of counts three and four simultaneously divested the trial court of jurisdiction and voided the remaining convictions is simply incorrect and his attempt to expand the scope of the remedy beyond the specific issue this court has already addressed is inconsistent with both the governing legal standard and this court’s prior findings.

In Tennessee, convictions on separate counts are treated independently and evaluated on their own elements and proof even when arising from the same indictment or proceeding. *See United States v. Powell*, 469 U.S. 57, 62 (1984); *Wiggins v. State*, 498 S.W.2d 92, 93 (Tenn. 1973). Because each count stands alone, the dismissal of one count has no effect on the validity of any remaining convictions. *See e.g., State v. Davis*, 466 S.W.3d 49, 71-77 (Tenn. 2015) (holding that Tennessee does not recognize “inconsistent” or “mutually exclusive” convictions because each count constitutes an independent judgment); *see also State v. Perkins*, No. W2022-01111-CCA-R3-CD, 2023 WL 4234750, at *8 (Tenn. Crim. App. June 28, 2023) (holding that the dismissal of one count of the indictment did not invalidate the other count in the indictment), *perm. app. denied* (Tenn. Nov. 20, 2023).

While the general mode of relief on an ineffective assistance claim, even on direct appeal, is a new trial or a new plea hearing,³ the dismissal of counts three and four of the presentment provides no basis for disturbing the eight separate convictions which were independently reviewed and affirmed. The relief granted was expressly limited to counts three and four. *Winbush*, 2020 WL 1466307, at *15. Additionally, this court upheld the remaining convictions, rejected Petitioner’s other ineffective assistance of counsel claims, and denied his cumulative-error claim. *Id.* at *10-21, 27.

In habeas corpus, our review is confined to the face of the judgments, and as this court held on appeal from Petitioner’s first habeas corpus petition on the same judgments, there is nothing in the record demonstrating that the existing eight convictions suffer from a jurisdictional defect or facial invalidity that would justify habeas corpus relief. *Summers*, 212 S.W.3d at 256; *Winbush*, 2021 WL 3046648, at *3. Nor has Petitioner’s sentence expired. Because the petition did not state a colorable claim for relief, summary dismissal was proper. Petitioner is not entitled to relief.

³ *See, e.g., State v. Burns*, 6 S.W.3d 453, 461-62 (Tenn. 1999); *State v. Brandon*, No. M2002-00073-CCA-R3-CD, 2002 WL 31373470, at *1-2 (Tenn. Crim. App. Oct. 15, 2002) (holding that *Strickland* analysis applies to ineffective assistance claims in motion for new trial and direct appeal).

CONCLUSION

For the reasons given, the judgment of the habeas corpus court is affirmed.

s/ *Jill Bartee Ayers*
JILL BARTEE AYERS, JUDGE