IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs February 1, 2023

STATE OF TENNESSEE v. PATRICK MARSHALL

Appeal from the Criminal Court for Shelby County
Nos. 11-05630, 15-04086, 16-01501 Chris Craft, Judge

No. W2022-01068-CCA-R3-CD

After pleading guilty on September 18, 2018, to three counts of aggravated rape in three separate cases, Patrick Marshall, Defendant, was sentenced to a total effective sentence of 25 years at 100%. Defendant filed a motion pursuant to Tennessee Rule of Criminal Procedure 36.1 in which he argued that his sentences were imposed in contravention of Tennessee Code Annotated section 39-13-523(e)(3), ordering "aggravated rapists" to serve the entire sentence "if the offense occurs on or after July 1, 2012." It is undisputed that Defendant's offense dates were before July 1, 2012. The trial court denied the motion, finding that the Tennessee Department of Correction ("TDOC") should allow Defendant to earn sentence reduction credits and entering an order directing the TDOC to allow Defendant to earn sentence reduction credits. Defendant appealed. We affirm the judgment of the trial court but remand for entry of corrected judgment forms that reflect Defendant is entitled to earn up to 15% sentence reduction credits.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed and Remanded

TIMOTHY L. EASTER, J., delivered the opinion of the court, in which ROBERT L. HOLLOWAY, JR. and KYLE A. HIXSON, JJ., joined.

Patrick Marshall, Tiptonville, Tennessee, Pro Se.

Herbert H. Slatery III, Attorney General and Reporter; Brent C. Cherry, Senior Assistant Attorney General; Steve Mulroy, District Attorney General; and Leslie Byrd, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

According to the scant technical record, Defendant pled guilty to three counts of aggravated rape in three separate cases in September of 2018. It is important to note that the offenses for which he pled guilty took place between the years 2000 and 2002. In Case Number 11-05630, Defendant pled guilty to one count of aggravated rape. The original judgment form in Case Number 11-05630 does not list an offense date and indicates Defendant was sentenced to 25 years. On the judgment form, the boxes under "Offender Status" labeled "Standard" and "Multiple" are both checked. In the "Release Eligibility" box, "Agg Rapist 100%" is checked.

On the next page of the technical record, there is a corrected judgment form for Case Number 11-05630. The corrected judgment does not contain a file stamped date and there is no date next to the judge's signature. The corrected judgment lists the offense date as "7/2/2002 thru 7/6/2002," the "Offender Status" box is marked "Standard," and the Release Eligibility is marked both "Standard 30%" and "Agg Rapist 100%."[1]

In the second case, Case Number 15-04086, Defendant pled guilty to another count of aggravated rape with an offense date of "9/23/2000." For this conviction, Defendant was sentenced to 19 years, to be served concurrently with the sentences in case numbers 11-05630 and 16-01501. On the judgment form in Case Number 15-04086, Defendant's "Offender Status" is marked "Standard" and his "Release Eligibility" is again marked "Agg Rapist 100%."

Lastly, in Case Number 16-01501, Defendant pled guilty to aggravated rape in exchange for an 18-year sentence, to be served concurrently with the sentences in the other two cases. The offense date in Case Number 16-01501 is listed as "6/5/02." On the judgment form in Case Number 16-01501, Defendant's "Offender Status" is marked "Standard" and his "Release Eligibility" is marked "Agg Rapist 100%."

The technical record does not contain a transcript of the guilty plea hearing. The "Petition for Waiver of Trial by Jury and Request For Acceptance of Plea of Guilty" indicates that Defendant was entering a guilty plea to three counts of "Ag. Rape" with

[1] It appears the corrected judgment in Case Number 11-05630 was entered at some point on or around November 3, 2020. There is a letter containing that date in the technical record from the trial judge to Petitioner indicating that a corrected judgment form was filed by the trial judge after Petitioner wrote a letter to the trial court. The letter from Petitioner to the trial court does not appear in the record. In the letter from the trial court to Petitioner, the trial judge informed Petitioner that the corrected judgment was entered to indicate that Petitioner was a "Standard Offender" rather than a "Multiple Offender." The trial judge also informed Petitioner that "'Agg Rapist 100%' was checked by your attorney on your original judgment instead of 'Mult 39-17-1324(j) 100%,' the TDOC should not have considered you sentenced as a multiple rapist in any event."

sentences of 25 years, 19 years, and 18 years, respectively. The location of service is listed as "TDOC" and the "Range and %" are listed as "I, 100%" for each count.

The technical record next contains a letter from Defendant to the trial court dated April 5, 2021. In that letter, Defendant claimed that the TDOC had a "problem with the Standard 30% and the Agg Rape 100%" on the judgment forms. He asked the trial court to "have all [his] charges [run] together as one 25 yr. sentence." The trial court replied in a letter dated May 11, 2021. The letter stated:

> [Y]ou pled guilty to three Aggravated Rapes on 9/12/18, receiving 25, 19, and 18[-]year sentences to be served concurrently at 100%. You were arrested on the 19 year and the 18[-]year Aggravated Rapes much later than the 25 year Aggravated Rape because you were indicted over a year later on the others, on 8/25/15 and 3/3/16, while in jail on the first (since 2/18/15). Therefore, you would serve much more time on your other cases if your punishment were increased to 25 years because you have less jail credit. You don't want to do that.

All of the preceding events culminated with Defendant's filing of a motion to correct an illegal sentence pursuant to Rule 36.1 on October 28, 2021. In the motion, Defendant argued that his sentences were imposed in contravention of Tennessee Code Annotated section 36-13-523(e)(3) "as reflected upon the face of the judgment, and therefore are illegal." Defendant complained that his offenses occurred prior to July 1, 2012, but that the judgment forms were marked "Aggravated Rapist 100%" in the section for "Release Eligibility." Defendant avered that the "illegal aspect was a material component of the guilty plea agreement" because he "pled guilty with understanding that he would be sentenced under Tenn[essee] Code Ann[otated] [section] 40-35-501(i) (100% and thus receive 15% sentence reduction credits)." The motion's certificate of service indicates a copy was sent by U.S. mail to the Office of the State Attorney General in Nashville.

The technical record does not contain a response from the State. Over eight months after Defendant filed the motion, the trial court entered an order denying the motion on July 15, 2022. In the order, the trial court implicitly found that Defendant failed to state a colorable claim. The trial court determined that all of Defendant's offenses were committed between 2000 and 2002. According to the trial court, at that time, aggravated rape was to be served at 100% but with the possibility of earning 15% sentence reduction credits. The trial court stated:

> The present statute taking away the possibility to receive sentence reduction credits for an aggravated rapist was not effective until 7/1/2012, which states that 'the provisions of this section requiring aggravated rapists to serve the

> entire sentence imposed by the court shall only apply if the required offense occurs on or after July 1, 2012." T.C.A. § 39-13-523(e)(3). As none of [Defendant's] crimes occurred after July 1, 2012, he is allowed to earn up to 15% sentence reduction credits even though an aggravated rapist." As his sentences are not illegal, this motion must be denied. However, the Department must allow him the possibility of earning sentence reduction credits and not apply the statute effective 7/1/12 to his three sentences to deny him this opportunity. IT IS, THEREFORE, ORDERED, ADJUDGED and DECREED that this motion be denied, but that the Department of Correction allow this defendant the possibility to earn sentence reduction credits and not mandate that he must serve 100% of his sentence before it would be possible for him to be released as that is contrary not only to the present statute but also contrary to the statute in existence at the time of the commission of his offenses.

The order does not indicate that a copy was certified to the State.

Defendant appealed.

Analysis

On appeal, Defendant argues that the trial court erred by failing to appoint counsel, conduct a hearing, or determine whether the motion stated a colorable claim. In addition, Defendant asserts that the trial court should have determined that the sentences were illegal and that the illegality was a material component of the plea agreement. The State, on the other hand, argues that the trial court properly denied the motion filed pursuant to Rule 36.1, but that the trial court erroneously determined that TDOC had to allow Defendant to earn sentence reduction credits. Moreover, the State insists that the judgment forms should be corrected to delete any reference to "Standard 30%" in the "Offender Status" box.

We begin our analysis with the Rule Defendant utilized to seek relief. Tennessee Rule of Criminal Procedure 36.1(a)(1) provides that a defendant "may seek to correct an illegal sentence by filing a motion to correct an illegal sentence in the trial court in which the judgment of conviction was entered." A defendant can seek correction of an unexpired illegal sentence at any time. *See State v. Brown*, 479 S.W.3d 200, 211 (Tenn. 2015). "[A]n illegal sentence is one that is not authorized by the applicable statutes or that directly contravenes an applicable statute." Tenn. R. Crim. P. 36.1(a). Our supreme court has interpreted the meaning of "illegal sentence" as defined in Rule 36.1 and concluded that the definition "is coextensive, and not broader than, the definition of the term in the habeas corpus context." *State v. Wooden*, 478 S.W.3d 585, 594-95 (Tenn. 2015). The court then reviewed the three categories of sentencing errors: clerical errors (those arising from a

clerical mistake in the judgment sheet), appealable errors (those for which the Sentencing Act specifically provides a right of direct appeal), and fatal errors (those so profound as to render a sentence illegal and void). *Id.* Commenting on appealable errors, the court stated that those "generally involve attacks on the correctness of the methodology by which a trial court imposed sentence." *Id.* In contrast, fatal errors include "sentences imposed pursuant to an inapplicable statutory scheme, sentences designating release eligibility dates where early release is statutorily prohibited, sentences that are ordered to be served concurrently where statutorily required to be served consecutively, and sentences not authorized by any statute for the offenses." *Id.* The court held that only fatal errors render sentences illegal. *Id.*

A trial court may summarily dismiss a defendant's Rule 36.1 motion if the motion fails to state a colorable claim. Tenn. R. Crim. P. 36.1(b)(2). A "'colorable claim' means a claim that, if taken as true and viewed in the light most favorable to the moving party, would entitle the moving party to relief under Rule 36.1." *Wooden*, 478 S.W.3d at 593. Whether a motion states a colorable claim for correction of an illegal sentence under Rule 36.1 is a question of law reviewed de novo on appeal. *Id.* at 589.

Here, the trial court dismissed the motion for relief, implicitly determining that Defendant failed to state a colorable claim. The trial court determined that the sentences were not illegal but ordered TDOC to award sentencing credits.[2] While we agree with the goal of the trial court's order, the judgment forms themselves do not reflect Defendant's ability to earn credits. TDOC "may not alter the judgment of a court, even if that judgment is illegal." *See State v. Burkhart*, 566 S.W.2d 871, 873 (Tenn. 1978), *superseded by rule on other grounds as stated in State v. Brown*, 479 S.W.3d 200, 209 (Tenn. 2015); *see also Sledge v. Tennessee Dep't of Correction*, No. M2016-01664-COA-R3-CV, 2017 WL 4331038, at *4 (Tenn. Ct. App. Sept. 28, 2017), *perm. app. denied* (Tenn. Feb. 15, 2018). TDOC is required to calculate an inmate's sentence based on the sentencing court's judgment and in accordance with applicable sentencing statutes. *See Bonner v. Tennessee Dep't Correction*, 84 S.W.3d 576, 581-82 (Tenn. Ct. App. 2001).

Thus, despite the trial court's attempt to ensure Defendant was eligible to receive up to 15% sentence reduction credits in its order, the current judgment forms do not reflect such. However, a trial court "may at any time correct clerical mistakes in judgments." Tenn. R. Crim. P. 36. Accordingly, we remand the matter to the trial court for entry of corrected judgment forms removing the notation that Defendant is an "Agg Rapist 100%" (and removing the Standard 30% Release Eligibility for Felony Offense notation in Case Number 11-05630) and noting in the "Special Conditions" box on all judgment forms that

[2] Based on the issues raised by Defendant in this appeal, TDOC apparently ignored the trial court's order and continued to deny Defendant sentencing reduction credits.

Defendant committed his offenses prior to July 1, 2012 and is, therefore, sentenced to a sentence of 100% but is entitled to earn up to 15% sentence reduction credits.

Conclusion

For the foregoing reasons, the judgment of the trial court is affirmed and remanded for entry of corrected judgment forms.

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TIMOTHY L. EASTER, JUDGE