

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs February 19, 2015 at Knoxville

STATE OF TENNESSEE v. BERTIN DEJESUS JIMENEZ

**Direct Appeal from the Circuit Court for Williamson County
No. II-CR037908 Timothy L. Easter, Judge**

No. M2014-01109-CCA-R3-CD – Filed October 5, 2015

The Appellant, Bertin DeJesus Jimenez, pled guilty to stalking and received a sentence of ninety days in the workhouse. Thereafter, the Appellant filed a motion to vacate the judgment, contending that the arrest warrant was void ab initio because it failed to allege all of the elements of the offense. The trial court denied the motion, and the Appellant appealed. Upon review, we conclude that the appeal should be dismissed.

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

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which D. KELLY THOMAS, JR., and ROBERT H. MONTGOMERY, JR., JJ., joined.

Venus Niner, Franklin, Tennessee, for the Appellant, Bertin DeJesus Jimenez.

Herbert H. Slatery III, Attorney General and Reporter; Sophia S. Lee, Senior Counsel; Kim R. Helper, District Attorney General; and Nichole Dusché, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

I. Factual Background

The record reflects that on October 25, 2011, a warrant was issued for the Appellant's arrest for aggravated stalking, a Class E felony. On November 11, 2011, the Appellant entered a best interest plea in the Williamson County General Sessions Court to the lesser-included offense of stalking, a Class A misdemeanor, for which he was sentenced to ninety days in the workhouse.

On December 13, 2013, more than two years after his guilty plea, the Appellant filed a “Motion to Vacate Judgment” in the Williamson County General Sessions Court. In the motion, the Appellant alleged that the arrest warrant failed to allege all of the elements of the offense of aggravated stalking. The Appellant maintained that “[t]he court never had jurisdiction as the warrant was void ab initio.” The general sessions court entered an order denying the motion on March 27, 2014, nunc pro tunc to February 5, 2014, and the Appellant filed a notice of appeal to the Williamson County Circuit Court.

On May 12, 2014, the circuit court conducted a hearing on the appeal. At the hearing, defense counsel argued that the affidavit of complaint failed to allege all of the elements of the charged offense of aggravated stalking or the elements of the lesser-included offense of stalking. Defense counsel contended that the warrant was void and that the general sessions court, therefore, “never had legal authority to bring [the Appellant] into the Court.” Defense counsel argued that the issue of jurisdiction was not waivable or time-barred because “a void warrant invalidates all subsequent proceedings emanating from that warrant.” The State responded that the warrant was valid and sufficiently put the Appellant on notice of the charged offense.

The trial court denied the motion, stating:

Rule 3 of the Tennessee Rules of Criminal Procedure requires that the Affidavit of Complaint allege that a person has committed an offense. It does – the one in question. It must be in writing, which it is. It must be made on oath before a magistrate or neutral and detached Court Clerk authorized by Rule 4 to make a probable cause determination – it does. And allege the essential facts constituting the offense.

The Court is satisfied that when the affidavit is read on its four corners, it does establish sufficient essential facts that constitute the offense of aggravated stalking. So, I see nothing that violates Rule 3. And I’m satisfied under Rule 4 the arrest warrant establishes probable cause for the issuance of the warrant under Rule 4(b).

So, the Court can not make a finding that the warrant is void ab initio as requested. This document was filed as a Motion to Vacate, which the Court finds to be untimely and even if I treat this as a Motion for Post[-]Conviction, which I

could consider it, it is still untimely in that the final disposition of the case was on November 1st, 2011. Thereby giving the [Appellant] until November 1st, 2012, to file a Petition for Post[-]Conviction, and this was not filed until . . . December of 2013[,] clearly outside the time limit. So, I find that the Court is without authority to grant the motion as a Motion to Vacate or as a Motion to Grant Post[-]Conviction Relief.

On appeal, the Appellant challenges the trial court's ruling.

II. Analysis

The Appellant contends that the trial court should have vacated the judgment of conviction because the affidavit of complaint underlying the warrant for his arrest failed to allege all of the essential elements of the charged offense of aggravated stalking. He asserts, therefore, that there was no probable cause for the issuance of the arrest warrant, that the warrant was void ab initio, that the subsequent proceedings were invalid, and that his conviction should be vacated.

The State responds that Tennessee Rule of Appellate Procedure 3(b) does not provide for an appeal of a denial of a motion to vacate a judgment and that the appeal should be dismissed.

This court has previously held that a defendant has no right under Tennessee Rule of Appellate Procedure 3(b) to appeal a trial court's denial of a motion to vacate a judgment of conviction. State v. Nora Hernandez, No. M2012-01235-CCA-R3-CD, 2013 WL 1858778, at *4 (Tenn. Crim. App. at Nashville, May 2, 2013). Accordingly, the instant appeal should be dismissed.

Moreover, the trial court observed that if the Appellant's motion were construed as a petition for post-conviction relief, it would likewise be untimely. We agree. In order to obtain post-conviction relief,

a person in custody under a sentence of a court of this state must petition for post-conviction relief under this part within one (1) year of the date of the final action of the highest state appellate court to which an appeal is taken, or if no appeal is taken, within one (1) year of the date on which the judgment became final, or consideration of such petition shall be barred. . . .

Tenn. Code Ann. § 40-30-102(a); see also Williams v. State, 44 S.W.3d 464, 468 (Tenn. 2001). A court does not have jurisdiction to consider a petition for post-conviction relief if it was filed outside the one year statute of limitations unless one of three narrow exceptions applies. Tenn. Code Ann. § 40-30-102(b). The Appellant has alleged no exception to the statute of limitations. Accordingly, even if his motion were treated as a post-conviction petition, it would be time-barred.

III. Conclusion

Based on the foregoing, the appeal is dismissed.

NORMA MCGEE OGLE, JUDGE