

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs August 19, 2015

STATE OF TENNESSEE v. KENNETH L. WYNN

Appeal from the Criminal Court for Hamilton County
Nos. 188918, 189686-189688 **Don W. Poole, Judge**

No. E2015-00575-CCA-R3-CD – Filed October 14, 2015

JAMES CURWOOD WITT, JR., J., dissenting.

Viewing the defendant’s motion in the light most favorable to the movant, as we are obliged to do, *see State v. David Morrow*, No. W2014-00338-CCA-R3-CO, slip op. at 3-4 (Tenn. Crim. App., Jackson, Aug. 13, 2014); *see also* Tenn. Sup. Ct. R. 28 § 2(H), we should accede to the State’s concession that a fair reading of the claim indicates that it bespeaks an illegal sentence.

Furthermore, Rule 36.1 contains no provision disqualifying a movant on the ground that the challenged sentence has expired. Indeed, to the contrary, “Rule 36.1 states that a defendant ‘may, *at any time*, seek the correction of an illegal sentence by filing a motion to correct an illegal sentence in the trial court in which the judgment of conviction was entered.’” *State v. Sean Blake*, No. W2014-00856-CCA-R3-CO, slip op. at 3 (Tenn. Crim. App., Jackson, Jan. 8, 2015) (quoting Tenn. R. Crim. P. 36.1(a)).

Because I respectfully differ from the majority on these points, I would reverse and remand the case for a hearing.

JAMES CURWOOD WITT, JR., JUDGE