

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs August 5, 2014

LANDREO LURRY v. STATE OF TENNESSEE

Appeal from the Criminal Court for Shelby County
Nos. 03-00143-44, W03-00325 James C. Beasley, Jr., Judge

No. W2014-00337-CCA-R3-HC - Filed November 10, 2014

The *pro se* petitioner, Landreo Lurry, appeals the order of the trial court dismissing his petition for writ of habeas corpus on the grounds that his petition failed to state a claim for habeas relief. The petitioner argues that he is entitled to habeas corpus, error coram nobis, and post-conviction relief because his Tennessee burglary convictions, which were used to enhance his federal firearms sentence, occurred following the improper transfer of his case from juvenile to criminal court without a transfer hearing or the representation of counsel. Following our review, we affirm the judgment of the trial court dismissing the petition.

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

ALAN E. GLENN, J., delivered the opinion of the Court, in which THOMAS T. WOODALL, P.J., and ROGER A. PAGE, J., joined.

Landreo Lurry, Atlanta, Georgia, Pro Se.

Herbert H. Slatery, III, Attorney General and Reporter; David H. Findley, Senior Counsel; Amy P. Weirich, District Attorney General; and Reginald Henderson, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTS

According to the record, on May 19, 2003, the petitioner pled guilty in the Shelby County Criminal Court in case numbers 03-00143 and 03-00144 to two counts of aggravated burglary and was sentenced to concurrent terms of three years for each conviction. On June 30, 2003, he pled guilty in the Shelby County Criminal Court in case number W03-00325 to aggravated burglary and was sentenced to three years to be served consecutively to his

sentences in the previous cases, for an effective six-year sentence.

In 2011, the petitioner pled guilty in the United States District Court to a violation of 18 U.S.C. § 922 (g), felon in possession of a firearm, and was sentenced to 180 months in the United States Bureau of Prisons. According to the transcript the petitioner provided of his sentencing hearing in district court, his Tennessee burglary convictions were apparently used to enhance his sentence in his federal case.

On November 7, 2013, the petitioner filed in the Shelby County Criminal Court a *pro se* “Petition for Writ of Habeas Corpus, Post Conviction Relief, and/or Writ of Error Coram Nobis.” The petitioner alleged that he was entitled to habeas corpus relief because the trial court did not strictly comply with the statute for transferring his burglary cases from juvenile to criminal court, rendering the court without jurisdiction and the judgments void. Specifically, he asserted that two of his burglary cases were improperly transferred from juvenile court without a transfer hearing or the representation of counsel. He alleged that he was entitled to error coram nobis relief because he had only recently discovered the improper transfer of his cases during his criminal prosecution in his federal case. He additionally alleged that he was actually innocent of the crimes because he “lacked the intent required for criminal responsibility for the ultimate criminal act” committed by his companions. He alleged that he was entitled to post-conviction relief because he was denied the effective assistance of counsel in that his cases were improperly transferred to criminal court without a hearing and the representation of counsel. He further alleged that his guilty pleas were unknowing and involuntary due to the ineffective assistance of counsel and the improper transfer of his cases to criminal court. Finally, he argued that due process considerations should toll the applicable statutes of limitations in the case.

On November 14, 2013, the trial court entered an order summarily dismissing the petition on the basis that the petitioner, who was serving a sentence at a federal penitentiary for a federal firearms conviction, was not restrained of his liberty by the State of Tennessee and, thus, failed to state a claim for which habeas corpus relief could be granted. Thereafter, the petitioner filed a timely notice of appeal to this court.

ANALYSIS

On appeal, the petitioner argues that his judgments are void because the juvenile court failed to comply with the law when transferring cases 00143 and 00325 to the criminal court. The petitioner also raises, for the first time on appeal, the issue of whether his concurrent sentences in case numbers 00143 and 00144 are illegal because he was on escape status in case number 00143 when the burglary in case number 00144 was committed. The State argues that the petitioner is not entitled to relief under any of the theories he presented in the

trial court, that he has waived his issue regarding his alleged illegal sentencing for failure to raise it in the trial court, and that, regardless of waiver, the petitioner has not shown that he was on escape status in case number 00143 when he committed the offense in case number 00144. We agree with the State.

It is well-established in Tennessee that the remedy provided by a writ of habeas corpus is limited in scope and may only be invoked where the judgment is void or the petitioner's term of imprisonment has expired. Faulkner v. State, 226 S.W.3d 358, 361 (Tenn. 2007); State v. Ritchie, 20 S.W.3d 624, 629 (Tenn. 2000); State v. Davenport, 980 S.W.2d 407, 409 (Tenn. Crim. App. 1998). A void, as opposed to a voidable, judgment is "one that is facially invalid because the court did not have the statutory authority to render such judgment." Summers v. State, 212 S.W.3d 251, 256 (Tenn. 2007) (citing Dykes v. Compton, 978 S.W.2d 528, 529 (Tenn. 1998)).

A petitioner bears the burden of establishing a void judgment or illegal confinement by a preponderance of the evidence. Wyatt v. State, 24 S.W.3d 319, 322 (Tenn. 2000). Furthermore, when a "habeas corpus petition fails to establish that a judgment is void, a trial court may dismiss the petition without a hearing." Summers, 212 S.W.3d at 260 (citing Hogan v. Mills, 168 S.W.3d 753, 755 (Tenn. 2005)). Whether the petitioner is entitled to habeas corpus relief is a question of law. Id. at 255; Hart v. State, 21 S.W.3d 901, 903 (Tenn. 2000). As such, our review is *de novo* with no presumption of correctness given to the habeas court's findings and conclusions. Id.

We agree with the State that the petitioner has not shown that he is entitled to habeas corpus relief. As the State points out, the transcript of the federal sentencing hearing reveals that the district court rejected the petitioner's argument that the criminal court lacked jurisdiction in case numbers 00143 and 00325 because they were transferred to criminal court without the appointment of counsel and a transfer hearing, concluding that, pursuant to Tennessee law, the petitioner's initial transfer to criminal court in case number 00144 terminated the jurisdiction of the juvenile court. See Tenn. Code Ann. § 37-1-134(c) ("The transfer pursuant to subsection (a) terminates jurisdiction of the juvenile court with respect to any and all delinquent acts with which the child may then or thereafter be charged, and the child shall thereafter be dealt with as an adult as to all pending and subsequent criminal charges[.]").

As for the petitioner's argument that his concurrent sentences were illegal because he committed one burglary while "on escape" from another burglary, we agree with the State that the petitioner has waived the issue by not raising it in the lower court. We further agree that, even if not waived, the petitioner would not be entitled to habeas corpus relief on the basis of this claim. As the State correctly points out, the judgments for cases 00143 and

00144 show that both offenses were committed on the same day. The petitioner has offered no proof that he committed the second burglary after having escaped from being held in lawful custody for the first burglary. See Tenn. Code Ann. § 39-16-605.

Finally, there is nothing in the record to show that the petitioner, who is currently incarcerated in the federal bureau of prisons on a federal firearms conviction, is restrained of his liberty by the challenged Tennessee convictions. “Use of the challenged judgment to enhance the sentence imposed on a separate conviction is not a restraint of liberty sufficient to permit a habeas corpus challenge to the original conviction long after the sentence on the original conviction has expired.” Hickman v. State, 153 S.W.3d 16, 23 (Tenn. 2004). The petitioner is not, therefore, entitled to habeas corpus relief on the basis of his claims.

The petitioner also argues that he is entitled to both error coram nobis and post-conviction relief, alleging that he did not discover that his cases had been improperly transferred to criminal court until his federal prosecution, that he was actually innocent of the crimes because he lacked the requisite mens rea, that his guilty pleas were unknowing and involuntary due to the improper transfer of his cases, that he was not afforded counsel or the appropriate transfer hearings, and that the applicable statute of limitations for the filing of both his petition for writ of error coram nobis and post-conviction relief should be tolled on due process grounds. We respectfully disagree.

A writ of error coram nobis is an “extraordinary procedural remedy,” filling only a “slight gap into which few cases fall.” State v. Mixon, 983 S.W.2d 661, 672 (Tenn. 1999) (citation omitted). Tennessee Code Annotated section 40-26-105(b) provides that coram nobis relief is available in criminal cases as follows:

The relief obtainable by this proceeding shall be confined to errors dehors the record and to matters that were not or could not have been litigated on the trial of the case, on a motion for a new trial, on appeal in the nature of a writ of error, on writ of error, or in a habeas corpus proceeding. Upon a showing by the defendant that the defendant was without fault in failing to present certain evidence at the proper time, a writ of error coram nobis will lie for subsequently or newly discovered evidence relating to matters which were litigated at the trial if the judge determines that such evidence may have resulted in a different judgment, had it been presented at the trial.

Our supreme court has stated the standard of review as “whether a reasonable basis exists for concluding that had the evidence been presented at trial, the result of the proceedings might have been different.” State v. Vasques, 221 S.W.3d 514, 525-28 (Tenn. 2007) (citation omitted).

The petitioner argues that the statute of limitations for filing a writ of error coram nobis should be tolled on due process grounds. When a petitioner requests tolling of the statute of limitations in his original petition, the statute of limitations issue is not waived by the State's failure to raise the issue as an affirmative defense. See Wilson v. State, 367 S.W.3d 229, 234 (Tenn. 2012). The one-year statute of limitations for filing a petition for writ of error coram nobis, see Tenn. Code Ann. § 27-7-103, may be tolled on due process grounds if the petitioner seeks relief based upon newly discovered evidence of actual innocence. Wilson, 367 S.W.3d at 234. The petitioner's claim of having only recently learned of the allegedly improper transfer of his cases from juvenile to criminal court does not constitute either newly discovered evidence or evidence establishing his actual innocence of the offenses. The petitioner is not, therefore, entitled to error coram nobis relief on the basis of his claims.

The petitioner also argues that he is entitled to post-conviction relief on the basis of his claims of ineffective assistance of counsel and involuntary and unknowing guilty pleas and that the statute of limitations for filing a post-conviction petition should be tolled on due process grounds. We, again, respectfully disagree. Under the Post-Conviction Procedure Act, a claim for post-conviction relief must be filed "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 the petition shall be barred." Tenn. Code Ann. § 40-30-102(a) (2012).

The post-conviction statute contains a specific anti-tolling provision:

The statute of limitations shall not be tolled for any reason, including any tolling or saving provision otherwise available at law or equity. Time is of the essence of the right to file a petition for post-conviction relief or motion to reopen established by this chapter, and the one-year limitations period is an element of the right to file the action and is a condition upon its exercise. Except as specifically provided in subsections (b) and (c), the right to file a petition for post-conviction relief or a motion to reopen under this chapter shall be extinguished upon the expiration of the limitations period.

Id.

Subsection (b) of the statute sets forth the three narrow exceptions under which an untimely petition may be considered, none of which apply in this case. See id. § 40-30-102(b). In addition to the three narrow exceptions listed in the statute, principles of due process may allow for the tolling of the statute of limitations in limited circumstances. See Seals v. State, 23 S.W.3d 272, 279 (Tenn. 2000) ("[W]e conclude that while the one-year

statute of limitations set forth in Tenn. Code Ann. § 40-30-202(a) does not violate due process on its face, application of the statute must not deny a petitioner a reasonable opportunity to raise a claim in a meaningful time and manner.”); see also Williams v. State, 44 S.W.3d 464, 468 (Tenn. 2001); Burford v. State, 845 S.W.2d 204, 208 (Tenn. 1992). We agree with the State that the petitioner was afforded the opportunity to raise his claims in a meaningful time and manner and that his lack of diligence in pursuing his claims does not justify equitable tolling of the statute of limitations. We conclude, therefore, that the petitioner is not entitled to post-conviction relief on the basis of his claims.

CONCLUSION

Based on the foregoing authorities and reasoning, we affirm the judgment of the trial court dismissing the petition.

ALAN E. GLENN, JUDGE