

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

**DONAVEN BROWN v. WAYNE BRANDON, WARDEN**

**Appeal from the Circuit Court for Hickman County  
No. 04-5128C R. E. Lee Davies, Judge**

**No. M2005-00419-CCA-R3-HC - Filed September 6, 2005**

This matter is before the Court upon the State's motion to affirm the judgment of the trial court by memorandum opinion pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. The petitioner has appealed the trial court's order summarily dismissing the petition for writ of habeas corpus. Upon a review of the record in this case, we are persuaded that the trial court was correct in summarily dismissing the habeas corpus petition and that this case meets the criteria for affirmance pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. Accordingly, the State's motion is granted and the judgment of the trial court is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Trial Court is Affirmed.**

JERRY L. SMITH, J., delivered the opinion of the court, in which DAVID H. WELLES, and ROBERT W. WEDEMEYER, JJ., joined.

Donaven Brown, Pro Se, Mountain City, Tennessee.

Paul G. Summers, Attorney General & Reporter; Elizabeth Bingham Marney, Assistant Attorney General, for the appellee, State of Tennessee.

**MEMORANDUM OPINION**

The petitioner was convicted of first degree murder and felony possession of a weapon in a penal institution stemming from an altercation with a fellow inmate. The petitioner was sentenced by the trial court to life without parole and three (3) years, respectively, to be served concurrently. He appealed these convictions to this Court, and we affirmed the judgments of the trial court. State v. Donaven Brown, No. W1999-00629-CCA-R3-CD, 2000 WL 1346411 (Tenn. Crim. App., at Jackson, Sept. 14, 2000).

The petitioner filed a petition for writ of habeas corpus on December 8, 2004. In this petition, the petitioner maintained that he did not waive his consent to have the trial court determine his sentence, and therefore, the trial court lacked jurisdiction to impose a sentence of life without parole and that the trial court's use of enhancement factors violated the United States Supreme Court's opinion in Blakely v. Washington, 542 U.S. 296 (2004). By order filed February 3, 2005, the trial court summarily dismissed the petitioner's petition because the "petitioner failed to establish that his conviction is void or that his sentence is illegal," and therefore, was not entitled to habeas corpus relief. The petitioner filed a timely notice of appeal.

### Analysis

The determination of whether to grant habeas corpus relief is a question of law. See McLaney v. Bell, 59 S.W.3d 90, 92 (Tenn. 2001). As such, we will review the trial court's findings de novo without a presumption of correctness. Id. Moreover, it is the petitioner's burden to demonstrate, by a preponderance of the evidence, "that the sentence is void or that the confinement is illegal." Wyatt v. State, 24 S.W.3d 319, 322 (Tenn. 2000).

Article I, section 15 of the Tennessee Constitution guarantees an accused the right to seek habeas corpus relief. See Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). A writ of habeas corpus is available only when it appears on the face of the judgment or the record that the convicting court was without jurisdiction to convict or sentence the defendant or that the defendant is still imprisoned despite the expiration of his sentence. Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993); Potts v. State, 833 S.W.2d 60, 62 (Tenn. 1992). In other words, habeas corpus relief may be sought only when the judgment is void, not merely voidable. See Taylor, 995 S.W.2d at 83. "A void judgment 'is one in which the judgment is facially invalid because the court lacked jurisdiction or authority to render the judgment or because the defendant's sentence has expired.' We have recognized that a sentence imposed in direct contravention of a statute, for example, is void and illegal." Stephenson v. Carlton, 28 S.W.3d 910, 911 (Tenn. 2000) (quoting Taylor, 955 S.W.2d at 83).

However, if after a review of the habeas petitioner's filings the trial court determines that the petitioner would not be entitled to relief, then the petition may be summarily dismissed. Tenn. Code Ann. § 29-21-109; State ex rel. Byrd v. Bomar, 381 S.W.2d 280 (Tenn. 1964). Further, a trial court may summarily dismiss a petition for writ of habeas corpus without the appointment of a lawyer and without an evidentiary hearing if there is nothing on the face of the judgment to indicate that the convictions addressed therein are void. Passarella v. State, 891 S.W.2d 619 (Tenn. Crim. App. 1994), superceded by statute as stated in State v. Steven S. Newman, No. 02C01-9707-CC-00266, 1998 WL 104492, at \*1 n.2 (Tenn. Crim. App., at Jackson, Mar. 11, 1998).

The petitioner first argues that he did not waive the right to have a jury determine the sentence.<sup>1</sup> A partial transcript of the proceedings in the trial court prior to sentencing is included in the technical record. In that transcript, the petitioner's trial counsel affirmatively waived the

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<sup>1</sup> The petitioner presents additional arguments in his brief to those he presented to the trial court. We are unable to review these additional arguments because the trial court's order did not address them. Tenn. R. App. P. 3(b).

petitioner's right to be sentenced by a jury. The petitioner is bound by the actions of his trial counsel. See House v. State, 911 S.W.2d 705, 714 (Tenn. 1995).

The petitioner argues that, pursuant to the United State Supreme Court decision in Blakely, his sentence is illegal because the trial court did not have jurisdiction or authority to enhance his punishment to life without parole using the enhancement factors. The Tennessee Supreme Court recently determined the Blakely did not announce a new rule of law and that the "Tennessee Criminal Sentencing Reform Act does not authorize a sentencing procedure which violates the Sixth Amendment right to jury trial." State v. Gomez, 163 S.W.3d 632, 651-52 n.16 (Tenn. 2005). Therefore, the habeas corpus court did not err in summarily denying the petition with regard to this issue.

### **Conclusion**

Rule 20 of the Rules of the Court of Criminal Appeals provides:

The Court, with the concurrence of all judges participating in the case, when an opinion would have no precedential value, may affirm the judgment or action of the trial court by memorandum opinion rather than by formal opinion, when:

(1)(a) The judgment is rendered or the action taken in a proceeding before the trial judge without a jury, and such judgment or action is not a determination of guilt, and the evidence does not preponderate against the finding of the trial judge, . . . .

We determine that this case meets the criteria of the above-quoted rule and, therefore, we grant the State's motion filed under Rule 20, and we affirm the judgment of the trial court.

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JERRY L. SMITH, JUDGE