

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

WAYFORD DEMONBREUN, JR. v. RICKY BELL, WARDEN

**Appeal from the Criminal Court for Davidson County
No. 94-B-1274 J. Randall Wyatt, Jr., Judge**

No. M2005-00563-CCA-R3-HC _ Filed September 7, 2005

The Petitioner, Wayford Demonbreun, Jr., appeals from the dismissal of his petition for the writ of habeas corpus. The State has filed a motion requesting that the Court affirm the trial court's denial of relief pursuant to Rule 20, Rules of the Court of Criminal Appeals. We find the State's motion has merit. Accordingly, the motion is granted and the appeal is affirmed pursuant to Rule 20, Rules of the Court of Criminal Appeals.

**Tenn. R. App. P. 3; Judgment of the Trial Court Affirmed Pursuant to Rule 20, Rules of
the Court of Criminal Appeals**

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

Wayford Demonbreun, Jr., pro se, Nashville, Tennessee.

Paul G. Summers, Attorney General and Reporter; David E. Coenen, Assistant Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

On March 7, 1995, the Petitioner pled guilty to one count of conspiracy to sell over 300 grams of cocaine, and he was sentenced to fifteen years as a Range I, standard offender. Wayford Demonbreun, Jr. v. State, No. 01C01-9711-CR-00539, 1999 WL 632303, at *1 (Tenn. Crim. App., at Nashville, Aug. 19, 1999), *no perm. app. filed*. He was denied post-conviction relief. Id. In February of 1997, the Petitioner was convicted by a jury of second degree murder and aggravated assault, and he was sentenced to an aggregate sentence of twenty-five years. Wayford Demonbreun, Jr. v. State, No. M2004-03037-CCA-R3-HC, 2005 WL 1541873, at *1 (Tenn. Crim. App., at Nashville, June 30, 2005), *no perm. app. filed*. His convictions in that case were affirmed on direct appeal State v. Wayford Demonbreun, Jr., No. M1998-00239-CCA-WRM-PC, 2000 WL 1541873, at *1 (Tenn. Crim. App., at Nashville, March 3, 2000), *perm. app. denied* (Tenn., Sept. 25, 2000), and he was denied post-conviction relief. Wayford

Demonbreun, Jr. v. State, No. M2002-02195- CCA-R3-PC, 2003 WL 22663212 (Tenn. Crim. App., at Nashville, Nov. 7, 2003), *perm. app. denied* (Tenn. March 8, 2004).

In October 2004, the Petitioner filed a pro se petition for writ of habeas corpus relief in the Davidson County Criminal Court. Demonbreun, 2005 WL 1541873, at *1. The trial court dismissed the Petitioner's petition, finding that the Petitioner was not entitled to habeas corpus relief. Id. The Petitioner appealed the trial court's dismissal, and this Court stated:

The [P]etitioner reasserts two arguments presented in his habeas petition. The [P]etitioner essentially claims that his petition for habeas corpus should be granted because he did not receive a hearing or disposition on his motion for a new trial, which violated his constitutional rights; and his sentences were unconstitutionally enhanced in violation of his right to a jury trial as proscribed by Blakely v. Washington, 542 U.S. 296, 124 S.Ct. 2531 (2004).

Id. This Court affirmed the trial court's dismissal of the Petitioner's habeas corpus petition, determining that "[t]he [P]etitioner has not presented a cognizable claim entitling him to habeas corpus relief. He has demonstrated neither a facially invalid judgment nor an expired sentence." Id. at *3. On December 15, 2004, the Petitioner filed a second pro se petition for habeas corpus relief, in which he contended that he was entitled to habeas corpus relief because he was deprived of the right to a jury trial and his indictment was insufficient. On January 26, 2005, the trial court issued an order dismissing the Petitioner's petition, finding that the Petitioner failed to adhere to the mandatory requirements for habeas corpus relief and, further, that the Petitioner's petition, on its face, offers no ground upon which habeas relief can be granted. The Petitioner filed his notice of appeal in the trial court on February 24, 2005.

The grounds upon which a writ of habeas corpus may be issued are very narrow. McLaney v. Bell, 59 S.W.3d 90, 92 (Tenn. 2001). A writ of habeas corpus is available only when it appears from the face of the judgment or record that either the convicting court was without jurisdiction to convict or sentence the petitioner, or the petitioner's sentence has expired. 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 only be sought when the judgment is void, not merely voidable. Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). The petitioner has the burden of establishing either a void judgment or an illegal confinement by a preponderance of the evidence. Passarella v. State, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994). 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. See Passarella v. State, 891 S.W.2d 619 (Tenn. Crim. App. 1994).

The procedural requirements for habeas corpus relief are mandatory and must be scrupulously followed. Hickman v. State, 153 S.W.3d 15, 19-20 (Tenn. 2004); Archer, 851 S.W.2d at 165. The formal requirements for an application or petition for writ of habeas corpus are found at Tennessee Code Annotated section 29-21-107:

(a) Application for the writ shall be made by petition, signed by either the party for whose benefit it is intended, or some person on the petitioner's behalf, and verified by affidavit.

(b) The petition shall state:

(1) That the person in whose behalf the writ is sought, is illegally restrained of liberty, and the person by whom and place where restrained, mentioning the name of such person, if known, and if unknown, describing the person with as much particularity as practicable;

(2) The cause or pretense of such restraint according to the best information of the applicant, and if it be by virtue of any legal process, a copy thereof shall be annexed, or a satisfactory reason given for its absence;

(3) That the legality of the restraint has not already been adjudged upon a prior proceeding of the same character, to the best of the applicant's knowledge and belief; and

(4) That it is the first application for the writ, or, if a previous application has been made, a copy of the petition and proceedings there shall be produced, or satisfactory reasons should be given for the failure to do so.

Tenn.Code Ann. § 29-21-107. "A habeas corpus court may properly choose to dismiss a petition for failing to comply with the statutory procedural requirements . . ." Hickman, 153 S.W.3d at 21.

The Petitioner failed to adhere to the mandatory requirements for habeas corpus petitions under Tennessee Code Annotated 29-21-107. The Petitioner falsely stated that "this is the Petitioner's first petition for writ of habeas corpus on this case," when he had previously filed a habeas corpus petition in October of 2004 in the same court, that being Davidson County Criminal Court. The Petitioner failed to attach his previous petition and the order denying it, and he failed to give satisfactory reasons for failing to comply with the mandates of Tennessee Code Annotated section 29-21-107. Further, the Petitioner alleges that his indictment was insufficient, but he failed to attach his indictment to his petition for the trial court's review.

Further, even if the Petitioner had complied with the statutory requirements, the Petitioner would not be entitled to relief. The Petitioner's first claim is that his sentence for his conviction for conspiracy to sell over 300 grams of cocaine is unconstitutional in light of Blakely v. Washington. In its decision affirming the dismissal of the Petitioner's first writ of habeas corpus, this Court stated:

The petitioner's Blakely argument also fails. First, this Court has previously determined that even if a Blakely violation occurred at the time of conviction and sentencing, such a violation would render the judgment voidable, and not void, unless the face of the record established that the trial court did not have jurisdiction to convict or sentence the petitioner. Second, our supreme court has held that Blakely does not announce a new rule of law or impact the validity of our statutory sentencing scheme. In addition, our supreme court has indicated that Blakely issues are not subject to retroactive application. Where the allegations in

a petition for writ of habeas corpus do not demonstrate that the judgment is void, a trial court may correctly dismiss the petition without a hearing.

Demonbreun, 2005 WL 1541873, at *2 (citations omitted); see also State v. Gomez, 163 S.W.3d 632 (Tenn. 2005). Accordingly, we conclude that the Petitioner's claim regarding his sentence based on Blakely is not a cognizable claim for habeas corpus relief.

The Petitioner's second claim is that his indictment was insufficient because it fails to sufficiently charge the offense and to state facts to show the specific offense. If proven, a defective indictment is an appropriate issue to be brought in a habeas corpus petition. See Wyatt v. State, 24 S.W.3d 319 (Tenn. 2000). The indictment in the appellate record reads as follows:

The Grand Jurors of Davidson County, Tennessee, duly impaneled and sworn, upon their oath, present that:

WAYFORD DEMONBREUN, JR., . . . on the 20th day of **December, 1993**, in Davidson County, Tennessee and before the finding of this indictment . . . did agree with another that one or more of them would engage in conduct that constitutes the offense of **selling three hundred (300) grams or more of a substance containing cocaine, a Schedule II controlled substance, in violation of Tennessee Code Annotated § 39-17-417**, with each having the culpable mental state required for the commission of that offense, and with each acting for the purpose of promoting or facilitating the commission of the offense, and in furtherance of the conspiracy did engage in one or more of the following overt acts:

- 1. Also on December 20, 1993, the defendant Wayford Demonbreun, Jr. provided approximately sixteen (16) ounces of cocaine to defendants . . . to sell to agents of the Tennessee Bureau of Investigation;**

. . . .

Wherefore, **Wayford Demonbreun, Jr.**, . . . did conspire to violate Tennessee Code Annotated § 39-17-417 in violation of Tennessee Code Annotated § 39-17-417, and¹

The Tennessee Supreme Court has held that, for constitutional purposes, "an indictment is valid if it provides sufficient information (1) to enable the accused to know the accusation to which answer is required, (2) to furnish the court adequate basis for the entry of a proper judgment, and (3) to protect the accused from double jeopardy." State v. Hill, 954 S.W.2d 725,

¹ We note that the indictment provided in the appellate record is incomplete. We will base our analysis on the incomplete indictment because it appears, from the Petitioner's brief, that the missing section after "and" states "the defendant acted against the peace and dignity of the State of Tennessee."

727 (Tenn. 1997). Further, the indictment must meet the statutory requirements of Tennessee Code Annotated section 40-13-102, which provides:

The indictment must state the facts constituting the offense in ordinary and concise language, without prolixity or repetition, in such a manner as to enable a person of common understanding to know what is intended, and with that degree of certainty, which will enable the court, on conviction, to pronounce the proper judgment; and in no case are such words as ‘force and arms’ or ‘contrary to the form of the statute’ necessary.”

In reviewing the indictment in this case, it meets both the constitutional and statutory requirements. The indictment states the accusation to which the Petitioner was required to answer and does this in ordinary language so that a person of common understanding knows what is intended. Further, the Tennessee Supreme Court has held that an indictment may refer to the statute that defines the offense and that indictment is sufficient and satisfies all constitutional and statutory requirements. See State v. Sledge, 15 S.W.3d 93, 95 (2000); see also Ruff v. State, 978 S.W.2d 95, 100 (Tenn. 1998).

The Petitioner has failed to establish by a preponderance of the evidence that his conviction is void or his term of imprisonment has expired. Accordingly, the judgment of the trial court is affirmed in accordance with Rule 20, Rules of the Court of Criminal Appeals.

ROBERT W. WEDEMEYER, JUDGE