

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs August 15, 2006

WALTER LEE CARUTHERS v. RICKY BELL, WARDEN

**Direct Appeal from the Criminal Court for Davidson County
No. 3697 Seth Norman, Judge**

No. M2006-00290-CCA-R3-HC - Filed on October 2, 2006

The petitioner, Walter Lee Caruthers, appeals from the trial court's order denying his petition for habeas corpus relief. In 1983, following convictions for first degree murder, assault with intent to commit murder in the first degree causing bodily harm, two counts of aggravated kidnapping, and two counts of armed robbery committed in October 1980, the petitioner was sentenced to death, three life sentences, and two sixty-year sentences, respectively, all to be served consecutively. On appeal, the petitioner argues that the trial court's denial of his habeas petition was erroneous because, under the Tennessee Criminal Sentencing Reform Act of 1982, five of his six sentences were void. Following our review, we affirm the trial court's denial of 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 JOHN EVERETT WILLIAMS, J., and J.S. DANIEL, SR. J., joined.

Walter Lee Caruthers, Nashville, Tennessee, Pro Se.

Paul G. Summers, Attorney General and Reporter; Michelle Chapman McIntire, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; and Dan Hamm, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTS

The following factual account of the petitioner's crimes was redacted from our supreme court's opinion on direct appeal, State v. Caruthers, 676 S.W.2d 935 (Tenn. 1984), cert. denied, 469 U.S. 1197, 105 S. Ct. 981, 83 L. Ed. 2d 982 (1985).

On October 11, 1980, the petitioner and his codefendant, Reginald Watkins, picked up the victims, Wilhelmina Stahl and her brother, George Stahl, in Ohio as they were hitchhiking to

Georgia. After driving the Stahls to a vacant lot in Knoxville, Tennessee, the petitioner and Watkins robbed them at gunpoint and forced them into the trunk of the petitioner's car. Afterwards, at another location, Ms. Stahl was raped, with the petitioner and Watkins each claiming that the other was the rapist. Id. at 938. The petitioner and Watkins then drove the Stahls to a remote lakeside location where Ms. Stahl was killed, with the petitioner and Watkins again claiming that the other was responsible. The petitioner and Watkins bashed Mr. Stahl in the head with a rock, shot him behind the left ear with a .32 caliber pistol, stabbed him multiple times in the throat, and attempted to drown him in the lake, but he survived. Id.

Following a jury trial held in November 1982, the petitioner was convicted of first degree murder, assault with intent to commit murder in the first degree causing bodily harm, two counts of aggravated kidnapping, and two counts of armed robbery. In 1983, he was sentenced to death for the first degree murder conviction, three consecutive life sentences for the assault and aggravated kidnapping convictions, and two consecutive sixty-year sentences for the armed robbery convictions

The petitioner's first degree murder conviction and death sentence were affirmed on direct appeal, id. at 942, and this court subsequently affirmed the trial court's denial of post-conviction relief, Caruthers v. State, 814 S.W.2d 64 (Tenn. Crim. App.), perm. to appeal denied (Tenn. 1991). On October 21, 2005, he filed a *pro se* petition for habeas corpus relief which the trial court dismissed without a hearing on January 26, 2006.

ANALYSIS

On appeal, the petitioner argues that five of the six sentences he received in 1983 were void.¹ Specifically, he asserts that the original trial court did not have jurisdiction or authority to impose the three life sentences or the two sixty-year sentences because he is a Range I offender with no prior convictions in Tennessee,² and the maximum sentence he could have received as a Range I offender under the Tennessee Criminal Sentencing Reform Act of 1982³ ("the 1982 Act") for the assault, aggravated kidnapping, and armed robbery charges was thirty-five years. As such, the petitioner contends that his life and sixty-year sentences were void and he is entitled to habeas corpus relief. Conversely, the State argues that the 1982 Act was not applicable to the petitioner and that he was properly sentenced under the sentencing provisions in effect at the time he committed the crimes. We agree with the State.

¹The petitioner made no mention of his conviction for first degree murder and death sentence in his petition, and he similarly does not mention either on appeal.

²The petitioner asserts that he had no prior convictions in Tennessee. However, we note that the jury found as a statutory aggravating factor that the petitioner had been previously convicted of one or more felonies which involved the use or threat of violence to the person. Caruthers, 676 S.W.2d at 938.

³Tenn. Code Ann. §§ 40-35-101 to -504 (1982) (repealed 1989).

To obtain habeas corpus relief, the petitioner must show by a preponderance of the evidence that his sentences are void and not merely voidable. See State v. Davenport, 980 S.W.2d 407, 409 (Tenn. Crim. App. 1998); Passarella v. State, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994). A void, as opposed to a voidable, judgment has been defined by our supreme court as “one in which the judgment is facially invalid because the court did not have the statutory authority to render such judgment.” Dykes v. Compton, 978 S.W.2d 528, 529 (Tenn. 1998); see also Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999).

In the present appeal, the petitioner’s argument turns on whether the 1982 Act applied to him when the original trial court imposed the sentences he now appeals. Section 40-35-112(a) of the 1982 Act specifies when it applied:

[a]ll persons who commit crimes on or after July 1, 1982, shall be tried and sentenced under this chapter. *For all persons who committed crimes prior to July 1, 1982, the prior law shall apply and shall remain in full force and effect in every respect, including but not limited to sentencing, parole and probation.*

Tenn. Code Ann. § 40-35-112(a) (1982) (repealed 1989) (emphasis added). In interpreting this provision, this court has “held that an accused who committed an offense prior to July 1, 1982, but sentenced after the effective date of the 1982 Act was not entitled to be sentenced pursuant to the 1982 Act.” State v. Turner, 919 S.W.2d 346, 361 (Tenn. Crim. App. 1995) (citing State v. Harris, 678 S.W.2d 473, 476-77 (Tenn. Crim. App. 1984)).

The petitioner was convicted of and sentenced for crimes which he committed on October 11, 1980. As such, the 1982 Act does not apply to him, and his argument that the 1982 Act makes his three life sentences and two sixty-year sentences facially invalid has no merit.⁴

Moreover, the petitioner’s sentences were authorized by the statutory sentencing provisions applicable for crimes committed in 1980. See Tenn. Code Ann. § 39-604(b) (Supp. 1979) (stating that the punishment for assault with intent to commit first degree murder causing bodily injury “shall be a determinate sentence of confinement in the state penitentiary for life or for a period of not less than five (5) years”); Tenn. Code Ann. § 39-2603(b) (Supp. 1979) (stating that “[a] person convicted of aggravated kidnapping shall be punished by imprisonment in the state penitentiary for life or for a term of not less than twenty (20) years”); Tenn. Code Ann. § 39-3901(a) (Supp. 1979) (permitting a sixty-year sentence for armed robbery). Thus, the petitioner’s sentences have neither expired nor are they void; and, as a result, it was not error for the trial court to deny his petition for habeas corpus relief.

⁴The petitioner’s additional argument that it was error for the trial court to deny his petition without a hearing also has no merit because when the allegations of the petition do not show that a judgment is void, the court may dismiss the petition without a hearing. McLaney v. Bell, 59 S.W.3d 90, 93 (Tenn. 2001).

CONCLUSION

Based upon the foregoing authorities and reasoning, we affirm the trial court's denial of the petition for habeas corpus relief.

ALAN E. GLENN, JUDGE