

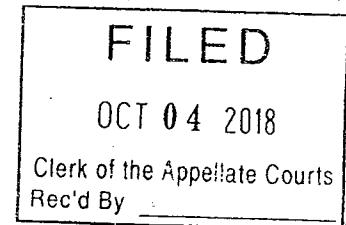
T.R.A.P. RII APPENDIX-A
CERTIORARI APPENDIX-A

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs May 22, 2018

STEPHEN B. WLODARZ v. SHAWN PHILLIPS, WARDEN

Criminal Court for Morgan County
No. 2017-CR-28

No. E2017-02252-CCA-R3-HC



JUDGMENT

Came the Appellant, Stephen B. Wlodarz, *pro se*, and also came the Attorney General on behalf of the State, and this case was heard on the record on appeal from the Criminal Court of Morgan County; and upon consideration thereof, this Court is of the opinion that there is no reversible error in the judgment of the habeas corpus court.

It is, therefore, ordered and adjudged by this Court that the judgment of the habeas corpus court is affirmed, and the case is remanded to the Criminal Court of Morgan County for execution of the judgment of that court and for collection of costs accrued below.

Because it appears to the Court that the Appellant, Stephen B. Wlodarz, is indigent, costs will be paid by the State of Tennessee.

Thomas T. Woodall, Judge
John Everett Williams, Presiding Judge
Robert W. Wedemeyer, Judge

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs May 22, 2018

STEPHEN B. WLODARZ v. SHAWN PHILLIPS, WARDEN

Appeal from the Criminal Court for Morgan County
No. 2017-CR-28 Jeffery Hill Wicks, Judge

No. E2017-02252-CCA-R3-HC

FILED

OCT 04 2018

Clerk of the Appellate Courts
Rec'd By

Petitioner, Stephen B. Wlodarz, appeals from the summary dismissal of his petition for writ of habeas corpus from his 2001 convictions for first degree premeditated murder, attempted first degree premeditated murder, two counts of aggravated assault, and one count of manufacturing a Schedule VI controlled substance. Petitioner entered "best interest" pleas under *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970), and was sentenced to a total effective sentence of life imprisonment "without parole." Following our review, we conclude that Petitioner has failed to state a cognizable claim for habeas corpus relief. Therefore, we affirm the summary dismissal of his petition.

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

THOMAS T. WOODALL, J., delivered the opinion of the court, in which JOHN EVERETT WILLIAMS, P.J., and ROBERT W. WEDEMEYER, J., joined.

Stephen B. Wlodarz, Wartburg, Tennessee, *Pro Se*.

Herbert H. Slatery III, Attorney General and Reporter; Nicholas W. Spangler, Assistant Attorney General; and Russell Johnson, District Attorney General, for the appellee, State of Tennessee.

OPINION

Factual and procedural background

This case relates to Petitioner's killing Officer Gerald Gibson of the Hawkins County Sheriff's Department. The facts underlying Petitioner's convictions were summarized in this court's opinion affirming the denial of post-conviction relief:

[T]he record reflects that on July 13, 2000, police officers were dispatched to the scene of a home burglary on Short Road near Rogersville, Tennessee. When they arrived, a witness gave a description of the suspect, which matched the petitioner. Officers went to the petitioner's home and confronted him, and the petitioner pulled out a shotgun and ordered the officers off his property. The officers left the scene; obtained arrest warrants against the petitioner for attempted aggravated burglary, vandalism, and two counts of aggravated assault; and returned to the petitioner's home. The petitioner barricaded himself inside, and a tactical unit was called. After several hours, the unit tried to force the petitioner out of his house by shooting tear gas canisters into it. During the melee, the victim was shot once in the head.

Steven Bernard Wlodarz v. State, No. E2002-02798-CCA-R3-PC, 2003 WL 22868267 (Tenn. Crim. App. Dec. 3, 2003), *perm. app. denied* (Tenn. May 17, 2004).

Pursuant to a negotiated plea agreement, Petitioner pleaded guilty on September 18, 2001, to first degree premeditated murder, attempted first degree premeditated murder, two counts of aggravated assault, and one count of manufacturing a Schedule VI controlled substance. The trial court sentenced him as a Range I, standard offender to concurrent sentences of life without parole for the murder conviction, twenty-five years for the attempted murder conviction, six years for each aggravated assault conviction, and six years for the manufacturing a Schedule VI controlled substance conviction.

Petitioner sought post-conviction relief on the ground that he entered involuntary and unknowing guilty pleas as a result of the ineffective assistance of counsel. The post-conviction court denied relief, and this court affirmed the post-conviction court's determinations. *See id.* Petitioner subsequently sought error coram nobis relief on the basis that he would not have pleaded guilty had he known the results of the ballistics testing by the Federal Bureau of Investigation ("FBI"). The coram nobis court denied the petition, determining that the ballistic reports were not "newly discovered evidence" as required by Tennessee Code Annotated section 40-26-105(b) because Petitioner had previously acknowledged the results of the testing. The coram nobis court further concluded that the ballistic evidence, even if newly discovered, did not undermine Petitioner's guilty pleas, because Petitioner entered the pleas knowingly and voluntarily. A panel of this court affirmed that decision. *Stephen Wlodarz v. State*, No. E2008-02179-CCA-R3-CO, 2010 WL 1998766 (Tenn. Crim. App. May 19, 2010). The Tennessee Supreme Court granted permission to appeal and affirmed, holding that "[w]hile the writ of error coram nobis is a viable remedy to attack the knowing and voluntary nature of guilty pleas which serve as the basis for convictions, the results of the ballistic tests did

not constitute ‘newly discovered evidence’ as required by [statute].” *Wlodarz v. State*, 361 S.W.3d 490, 506 (Tenn. 2012). We note that in *Frazier v. State*, 495 S.W.3d 246, 248 (Tenn. 2016), our supreme court subsequently held that petitions for error coram nobis relief are not available for relief in cases where the conviction is the result of a guilty plea.

On August 18, 2017, Petitioner filed a *pro se* petition for writ of habeas corpus, alleging that his convictions are void and his sentence illegal. The State filed a motion to dismiss the petition, which the trial court granted, and this appeal followed.

Analysis

Petitioner contends that the habeas corpus court erred by summarily dismissing his petition. He makes the following claims in his brief on appeal: 1) that the judgment of conviction was “entered pursuant to a guilty plea maintaining innocence proceeding lawfully unresolved[;]” 2) that the trial court “failed to comply with the critical criterion set forth by the United States Supreme Court in *North Carolina v. Alford*, 91 S. Ct. 160 (1970)[;]” 3) that trial court “misrepresent[ed] [] Petitioner’s psych[ological] evaluation relevant to conviction and sentencing[;] and 4) that his guilty plea was induced by fraud. The State responds that the habeas corpus court properly dismissed the petition because Petitioner failed to state a colorable claim for relief. We agree with the State.

Under Tennessee law, the “grounds upon which habeas corpus relief may be granted are very narrow.” *Taylor v. State*, 995 S.W.2d 78, 83 (Tenn. 1999). The writ will issue only where the petitioner has established: (1) a lack of jurisdiction for the order of confinement on the face of the judgment or in the record on which the judgment was rendered; or (2) that he is otherwise entitled to immediate release because of the expiration of his sentence. *See State v. Ritchie*, 20 S.W.3d 624, 630 (Tenn. 2000); *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993).

The purpose of the habeas corpus petition is to contest a void, not merely a voidable, judgment. *State ex rel. Newsom v. Henderson*, 424 S.W.2d 186, 189 (Tenn. 1968). 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.” *See Summers v. State*, 212 S.W.3d 251, 256 (Tenn. 2007). In contrast, “[a] voidable conviction or sentence is one which is facially valid and requires the introduction of proof beyond the face of the record or judgment to establish its invalidity.” *Taylor*, 995 S.W.2d at 83. A petitioner bears the burden of establishing a void judgment or illegal confinement by a preponderance of the evidence. *See Wyatt v. State*, 24 S.W.3d 319, 322 (Tenn. 2000). A habeas corpus court may summarily dismiss a petition without a hearing when the petition “fails to demonstrate that the judgment is void.” *Hickman v. State*, 153 S.W.3d

16, 20 (Tenn. 2004); *see* T.C.A. § 29-21-109. We note that the determination of whether to grant habeas corpus relief is a matter of law; therefore, we will review the habeas corpus court's finding *de novo* without a presumption of correctness. *McLaney v. Bell*, 59 S.W.3d 90, 92 (Tenn. 2001).

Petitioner claims that his judgments of conviction were "entered pursuant to a guilty plea maintaining innocence proceeding lawfully unresolved." It appears that Petitioner argues that the judgments are void because his guilty pleas were made pursuant to *Alford*, by which he maintained his innocence. The Tennessee Supreme Court has explained an *Alford* plea as follows:

Although uncommon, criminal defendants also may plead guilty while maintaining that they did not commit the crime charged. Such pleas are often referred to as "*Alford* pleas" based on the United States Supreme Court case, *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970). In *Alford*, our nation's high court held that a defendant who professed his innocence could nonetheless enter a constitutionally valid guilty plea when the defendant "intelligently concludes that his interests require entry of a guilty plea." *Id.* at 37, 91 S. Ct. 160. Our Rules of Criminal Procedure refer to such pleas as "nolo contendere" pleas. Tenn. R. Crim. P. 11(a)(2); *see also State v. Crowe*, 168 S.W.3d 731, 743 (Tenn. 2005).

Frazier v. State, 495 S.W.3d 246, 250 n.1 (Tenn. 2016).

Petitioner's claim does not entitle him to habeas corpus relief because the claim rests on consideration of proof beyond the face of the judgment. Petitioner cites from this court's opinion affirming the denial of post-conviction relief that "[n]o facts were presented at the guilty plea hearing." *Wlodarz v. State*, 2003 WL 22868267 at *1. The allegation that the State did not provide a factual basis to support Petitioner's convictions, even if true, would result in a voidable judgment, not a void judgment. *See Stephanie D. Cooley v. State*, No. M2013-00205-CCA-R3-HC, 2013 WL 5975135, at *4 (Tenn. Crim. App. Nov. 8, 2013), *perm. app. denied* (Tenn. Apr. 10, 2014). We conclude that the Petitioner has failed to state a colorable claim for habeas corpus relief. He is not entitled to relief on this basis.

Petitioner also claims that his pleas "failed to comply with the critical criterion set forth . . . in *Alford*." With this claim, Petitioner appears to argue that his guilty pleas were not knowingly and voluntarily entered. He asserts that he was "excluded from crucial court pre-trial proceedings" and that his guilty pleas were "induced by fear, ignorance, [and] misrepresentation." Whether Petitioner's pleas were entered voluntarily

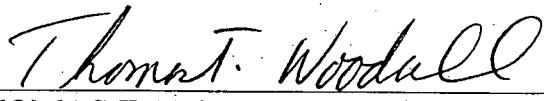
and knowingly is a factual determination that is outside the scope of habeas corpus relief because it rests on evidence beyond the face of the judgment. The voluntariness of Petitioner's pleas was properly determined in his post-conviction proceeding and is not a cognizable basis for habeas corpus relief. *Wlodarz v. State*, 2003 WL 22868267 at *5; *see Archer*, 851 S.W.2d at 165.

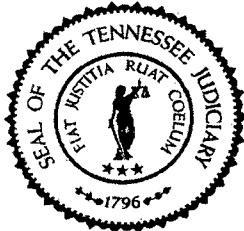
Petitioner also claims that the criminal court "misrepresent[ed] . . . [P]etitioner's psych[ological] evaluation relevant to conviction and sentencing." Petitioner asserts that the trial court should not have relied upon a psychological evaluation prepared by Dr. Eric Engum in determining whether Petitioner was competent to waive his rights at the guilty plea hearing. This claim falls under the broader category of whether Petitioner's pleas were knowing and voluntary, and again, such claims are outside the scope of habeas corpus relief. *Archer*, 851 S.W.2d at 165.

Finally, Petitioner claims that his pleas are a product of fraud. This claim, if proven, would render the challenged judgments voidable rather than void and does not present a cognizable claim for habeas corpus relief. *Odell Wisdom v. Randy Lee, Warden, and State*, No. E2016-01737-CCA-R3-HC, 2017 WL 991910, at *2 n.3 (Tenn. Crim. App. Mar. 14, 2017) (citing *Archer*, 851 S.W.2d at 163-64) ("[T]he Petitioner's claim that his guilty plea was unknowing and involuntary due to coercion, if proven, would render the challenged judgment voidable rather than void and does not present a cognizable claim for habeas corpus relief."); *Larry L. Halliburton, v. State*, W2001-00755-CCA-R3-CO, 2002 WL 1558611 (Tenn. Crim. App. Jan. 30, 2002) ("A claim that a guilty plea was not knowingly and voluntarily entered because of coercion is not cognizable in a habeas corpus proceeding."). Petitioner is not entitled to relief on this basis.

CONCLUSION

In consideration of the foregoing and the record as a whole, we affirm the judgment of the habeas corpus court.


THOMAS T. WOODALL, JUDGE



CERTIORARI APPENDIX-C

Court of Criminal Appeals – Eastern Division
Appellate Court Clerk's Office - Knoxville
Supreme Court Building
505 Main Street, Suite 200
Knoxville, TN 37902
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Stephen B. Wlodarz #128363
Morgan County Correctional Complex
P.O. Box 2000
Wartburg TN 37887

Re: E2017-02252-CCA-R3-HC - STEPHEN B. WLODARZ v. SHAWN PHILLIPS, WARDEN

Notice: Order - Petition to Rehear Denied

Attached to this cover letter, please find the referenced notice issued in the above case. If you have any questions, please feel free to call our office at the number provided.

cc: Stephen B. Wlodarz
Nicholas White Spangler
Judge Jeffery Hill Wicks
District Attorney General - 9th Judicial District

**IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE**

STEPHEN B. WLODARZ v. SHAWN PHILLIPS, WARDEN

**Morgan County Criminal Court
2017-CR-28**

No. E2017-02252-CCA-R3-HC

Date Printed: 10/29/2018

Notice / Filed Date: 10/29/2018

NOTICE - Order - Petition to Rehear Denied

The Appellate Court Clerk's Office has entered the above action.

If you wish to file an application for permission to appeal to the Tennessee Supreme Court pursuant to Rule 11 of the Tennessee Rules of Appellate Procedure, you must file an original and six copies with the Appellate Court Clerk. The application must be filed "within 60 days after the denial of the petition or entry of the judgment on rehearing." NO EXTENSIONS WILL BE GRANTED.

James M. Hivner
Clerk of the Appellate Courts

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

FILED
10/29/2018
Clerk of the
Appellate Courts

STEPHEN B. WLODARZ v. SHAWN PHILLIPS, WARDEN

**Criminal Court for Morgan County
No. 2017-CR-28**

No. E2017-02252-CCA-R3-HC

ORDER

Petitioner has timely filed a petition to rehear in this case following this court's affirmation of the habeas corpus court's judgment. After review, we conclude that the petition to rehear should be denied.

Accordingly, the petition to rehear is denied.

PER CURIAM

Thomas T. Woodall, Judge
John Everett Williams, Presiding Judge
Robert W. Wedemeyer, Judge

TRAP RII APPENDIX-C
CERTIORARI APPENDIX-D

IN THE CRIMINAL COURT OF MORGAN COUNTY, TENNESSEE
AT WARTBURG

STEPHEN B. WLODARZ,

)

Petitioner,

)

v.

)

Case Nos. 2017-CR-28

SHAWN PHILLIPS, WARDEN

)

Respondent.

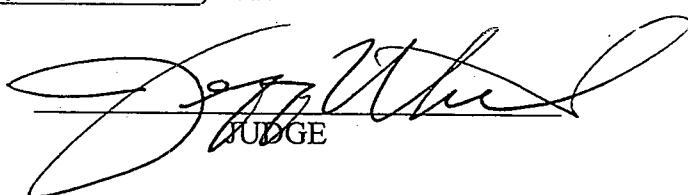
)

ORDER DISMISSING PETITION FOR WRIT OF HABEAS CORPUS

This case came before the Court for review upon the petition for writ of habeas corpus and Respondent's motion to dismiss, after which the Court is of the opinion that Respondent's motion is well taken and should be granted.

Accordingly, it is hereby ordered, adjudicated and decreed that the motion to dismiss is GRANTED, and the petition for writ of habeas corpus is hereby DISMISSED.

ENTER this the 18th day of October, 2017.



JUDGE

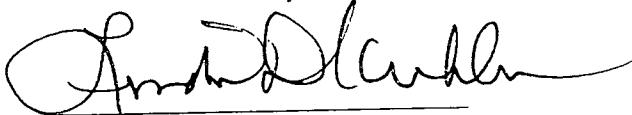
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PK/Bc

MORGAN CO. CIRCUIT CLERK

Submitted for entry:



LINDA D. KIRKLEN
Assistant Attorney General
Criminal Appeals Division
P.O. Box 20207
Nashville, Tennessee 37202
615-741-8726
B.P.R. No. 17363
Linda.Kirklen@ag.tn.gov

CERTIFICATE OF SERVICE

I certify that a true and exact copy of the foregoing has been forwarded by first-class mail, postage prepaid, to the petitioner, Stephen B. Wlodarz #128363, MCCX, P.O. Box 2000, Wartburg, TN 37887-2000, on this the 18th day of October, 2017.

Pamela Keck B.C.
Judge/Clerk

IN THE CRIMINAL COURT OF MORGAN COUNTY, TENNESSEE

AT WARTBURG

STEPHEN B. WLODARZ,)
Petitioner,)
v.) Case Nos. 2017-CR-28
SHAWN PHILLIPS, WARDEN)
Respondent.)

**MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS
AND MEMORANDUM OF LAW**

Petitioner Stephen B. Wlodarz filed a petition for writ of habeas corpus on August 18, 2017, challenging his life sentence for first-degree premeditated murder. (Pet. at 2; Doc. 2(a)(i).) According to the petition, this conviction is the product of a best interest plea. (Pet. at 17, 18; Doc. 3(a)) Interspersed among a myriad of alleged facts, the petition asserts the following “civil rights deprivations” (Pet. at 2): (1) violations of the 1989 Sentencing Reform Act (Pet. at 2); (2) violations of the Code of Judicial Conduct (Pet. at 2-3); (3) violations of the First, Fifth, Sixth, and Fourteenth Amendments by the Hawkins County Sheriff’s Department (Pet. at 5, ¶ 10); (4) possible grand jury misconduct and perjured grand jury testimony (Pet. at 7); (5) violation of the right to an impartial grand jury (Pet. at 8); (6) violation of rights under the Fourteenth Amendment and Tenn. Const. art. I, § 7, by a TBI agent (Pet. at 9-10); (7) violations of due process (Pet. at 16, 32-33); (8) the sentence violates the Eighth, Thirteenth, and Fourteenth Amendment and Tenn. Const. art. I, §§ 1, 8, and 33 (Pet. at 18, 40); (9) the plea was not voluntary and knowing (Pet. at 19-20, 31, 43); (10) structural errors involving violations of Tennessee criminal law and

“inalienable State and Federal Constitutional Rights” (Pet. at 20-21); (11) violation of his right to a fair trial by court-appointed post-conviction counsel (Pet. at 21-27); (12) violation of the right to fair and consistent sentencing under Tenn. Code Ann. § 40-35-102 (Pet. at 28-30); (13) deprivation of effective post-conviction counsel (Pet. at 31); and (14) the judge lacked jurisdiction to act as a trial judge in a plea hearing under Tenn. Code Ann. § 16-10-101 (Pet. at 44-46). But the petition should be summarily dismissed because the petitioner’s numerous complaints are not cognizable bases for state habeas relief. They do not implicate a void judgment, an expired sentence, or a lack of jurisdictional authority by the convicting/sentencing court.

PROCEDURAL HISTORY

While Petitioner has attached a large number of exhibits to his 49-page petition, there are only a few documents regarding the procedural history, and the allegations in the petition do not reveal any detailed procedural history. The petition and attached underlying judgment reveal that Petitioner pleaded guilty to premeditated first-degree murder in the Hawkins County Criminal Court on September 18, 2001.¹ (Pet. at 5; Doc. 2(a)(i).) He received a life sentence without the possibility of parole, which he is currently serving in the Morgan County Correctional Complex. (Pet. at 1.)

Petitioner alleges that he filed a *pro se* petition for post-conviction relief on September 5, 2002.² (Pet. at 21.) The trial court denied post-conviction relief, which was upheld by the Court of Criminal Appeals. *Wlodarz*, 2003 WL 22868267, at *1, 6 (aff’g trial court’s denial of

¹ Petitioner also pleaded guilty to attempted first-degree premeditated murder, two counts of aggravated assault, and one count of manufacturing a Schedule VI controlled substance. *Wlodarz v. State*, No. E2002-02798-CCA-R3-PC, 2003 WL 22868267, at *1 (Tenn. Crim. App. Dec. 3, 2003), *perm. app. denied*, (Tenn. May 17, 2004). None of these judgments are attached to or mentioned in the petition for habeas corpus as required by Tenn. Code Ann. § 29-21-107.

² Thus, Respondent assumes Petitioner is not challenging these sentences and will not address them in this motion.

² For a different filing date for the petition—September 12, 2002—see *Wlodarz v. State*, 361 S.W.3d 490, 494 (Tenn. 2012), *abrogated by Frazier v. State*, 495 S.W.3d 246 (Tenn. 2016). It is not attached to the habeas corpus petition.

Petitioner's claims that his pleas were involuntary and trial counsel was ineffective). Petitioner then filed a motion to reopen the petition in 2005, which the trial court denied. *Wlodarz*, 361 S.W.3d at 495. The appellate court agreed. *Id.*; *Wlodarz v. State*, No. E2005-00428-CCA-R28-PC (Tenn. Crim. App. May 6, 2005 Order) (attachment "A"), *perm. app. denied*, No. E2005-00438-CCA-R11-PC (Tenn. Dec. 5, 2005 Order) (attachment "B").

In 2007, Petitioner filed a petition for writ of error coram nobis in the Hawkins County Criminal Court, again challenging the voluntariness of his guilty pleas and alleging ineffective assistance of trial counsel. *Wlodarz*, 361 S.W.3d at 495. The Court of Criminal Appeals affirmed the dismissal, as did the Tennessee Supreme Court. *Wlodarz*, 361 S.W.3d at 496, 506-507; *Wlodarz v. State*, No. E2008-02179, 2010 WL 1998766, at *1, 5 (Tenn. Crim. App. May 19, 2010), *perm. app. granted*, (Tenn. Aug. 25, 2010). Petitioner filed for habeas corpus relief in this Court on August 18, 2017.

ARGUMENT

Article I, § 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.'" *Stephenson v. Carlton*, 28 S.W.3d 910, 911 (Tenn. 2000) (quoting *Taylor*, 995 S.W.2d at 83.)

If, after reviewing the petitioner's filings, the habeas corpus 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, 283 (Tenn. 1964). Further, a habeas corpus 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. *Summers v. State*, 212 S.W.3d 251, 261 (Tenn. 2007). 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).

Summary dismissal of the petition is appropriate in this case because the violations alleged by Petitioner do not show that the convicting court lacked jurisdiction to convict or sentence him or that his life sentence has expired. *See Archer*, 851 S.W.2d at 164. Most of Petitioner's claims rehash the State's evidence against him or the actions of investigators and attorneys before and after he pleaded guilty. These are essentially challenges to the voluntariness of his guilty plea or effective assistance of counsel and would require additional proof beyond the judgment or record of the proceeding regarding Petitioner's understanding of the plea and his attorney's strategy. Such claims do not render the challenged judgment void but merely voidable. *See, e.g., Rich v. State*, No. W2011-00891-CCA-R3-HC, 2012 WL 3030526, at *2 (Tenn. Crim. App. July 25, 2012) (aff'g dismissal of the habeas petition because claims of ineffective assistance of counsel could not be ascertained merely from the judgment or records and would render the judgment voidable, not void) (no perm. app. filed); *Summers*, 212 S.W.3d at 258 (noting a judgment is merely voidable if a petitioner must offer proof beyond the record to show the conviction is invalid, and concluding "[v]oluntariness of the plea . . . has no relevance in a habeas corpus proceeding.").

Petitioner further claims that the trial judge lacked jurisdiction under Tenn. Code Ann. § 16-10-101 and the waiver of rights form³ to find him guilty or to impose the sentence because the judge never acted as the trier of fact regarding Petitioner's innocence. (Pet. at 44-45.) According to Petitioner, the judge was required to assess and weigh the proof in his attached exhibits to reach the guilty verdict. (Pet. at 44-45.) But there is nothing on the face of the judgment or in the record that would entitle Petitioner to habeas corpus relief on these jurisdictional grounds. Subject matter jurisdiction is conferred solely by the legislature or the constitution. Tenn. Const. art. VI, § 8; *State v. Yoreck*, 133 S.W.3d 606, 612 (Tenn. 2004). While a lack of subject matter jurisdiction may form the basis of habeas relief, it must be evident from the face of the judgment or the record. *Id.* at 612 & n. 9; *State v. Richie*, 20 S.W.3d 624, 633 (Tenn. 2000). A petitioner cannot attack a facially valid conviction in a habeas proceeding. *Richie*, 20 S.W.3d at 630.

In this instance, the Hawkins County Criminal Court had subject matter jurisdiction because the legislature has placed exclusive original jurisdiction over all crimes and misdemeanors in the state's circuit courts, which includes criminal courts. Tenn. Code Ann. § 16-10-102; *see McCarthy v. State*, 89 Tenn. 543, 15 S.W. 736 (1890); *State v. Goodson*, 77 S.W.3d 240, 242-43 (Tenn. Crim. App. 2001) (finding the Sullivan County Criminal Court had subject matter jurisdiction over appellant's offense under Tenn. Code Ann. § 16-10-102). The trial court acquired subject matter jurisdiction when Petitioner was properly indicted, and any problem with his plea makes his conviction, at most, voidable. *See Studdard v. State*, 182 S.W.3d 283, 286-87 (Tenn. 2005); *Yoreck*, 133 S.W.3d at 612 & n. 9. The judgment is facially valid when the court had the authority and jurisdiction to impose it, and Petitioner is not entitled to use a habeas corpus

³ Petitioner points to the wording, "I hereby submit my case to the Trial Judge for decisions, both as to guilt and punishment." (Ex. 3d(ii).)

proceeding to attack the court's jurisdiction with proof outside the record. *See Hickman v. State*, 153 S.W.3d 16, 20 (Tenn. 2004); *Richie*, 20 S.W.3d at 630-33.

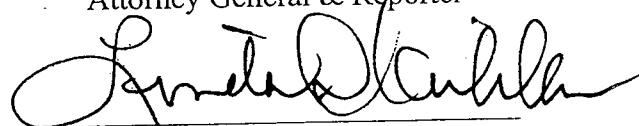
Contrary to Petitioner's assertion, Tennessee Code Ann. § 16-10-101 does not limit a court's jurisdiction to convict or sentence a defendant who pleads guilty. That statute merely gives circuit court judges the authority to "administer right and justice according to law in all cases where the jurisdiction is not conferred upon another tribunal." Tenn. Code Ann. § 16-10-101. As discussed above, jurisdiction over Petitioner's plea was vested in the criminal trial court and nowhere else. There is also no authority for Petitioner's contention that a waiver of rights form somehow affects the trial court's jurisdiction over a plea proceeding. This cannot be the case when jurisdiction is granted solely by the legislature or the constitution and cannot be created or destroyed by a plea form. Petitioner essentially seeks to withdraw his plea and relitigate his guilt using inadmissible evidence outside the record, which is not permitted in a habeas proceeding. *See Richie*, 20 S.W.3d at 633 ("[O]ur procedures do not contemplate that a petitioner may relitigate facts in a habeas corpus proceeding.").

CONCLUSION

The petition for writ of habeas corpus must be dismissed summarily.

Respectfully submitted,

HERBERT H. SLATERY III
Attorney General & Reporter



LINDA D. KIRKLEN
Assistant Attorney General
P.O. Box 20207
Nashville, Tennessee 37202
615-741-8726
B.P.R. No. 17363

CERTIFICATE OF SERVICE

I certify that a true and exact copy of the foregoing has been forwarded by first-class mail, postage prepaid, to the petitioner, Stephen B. Wlodarz #128363, MCCX, P.O. Box 2000, Wartburg, TN 37887-2000, on this the 18th day of September, 2017.



LINDA D. KIRKLEN
Assistant Attorney General

CERTIORARI APPENDIX-F

**IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE**

STEPHEN B. WLODARZ v. SHAWN PHILLIPS, WARDEN

**Criminal Court for Morgan County
No. 2017-CR-28**

No. E2017-02252-SC-R11-HC

FILED

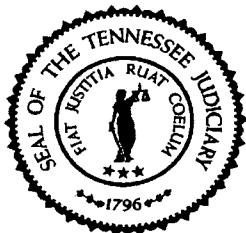
FEB 20 2019

Clerk of the Appellate Courts
Rec'd by _____

ORDER

Upon consideration of the application for permission to appeal of Stephen B. Wlodarz and the record before us, the application is denied.

PER CURIAM



Supreme Court – Eastern Division
Appellate Court Clerk's Office - Knoxville
Supreme Court Building
505 Main Street, Suite 200
Knoxville, TN 37902
(865) 594-6700

Stephen B. Wlodarz #128363
Morgan County Correctional Complex
P.O. Box 2000
Wartburg TN 37887

Re: E2017-02252-SC-R11-HC - STEPHEN B. WLODARZ v. SHAWN PHILLIPS, WARDEN

Notice: Case Dispositional Decision - TRAP 11 Denied

Attached to this cover letter, please find the referenced notice issued in the above case. If you have any questions, please feel free to call our office at the number provided.

cc: Stephen B. Wlodarz
Nicholas White Spangler
Judge Jeffery Hill Wicks

**IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE**

STEPHEN B. WLODARZ v. SHAWN PHILLIPS, WARDEN

**Morgan County Criminal Court
2017-CR-28**

No. E2017-02252-SC-R11-HC

Date Printed: 02/20/2019

Notice / Filed Date: 02/20/2019

NOTICE - Case Dispositional Decision - TRAP 11 Denied

The Appellate Court Clerk's Office has entered the above action.

James M. Hivner
Clerk of the Appellate Courts

**Additional material
from this filing is
available in the
Clerk's Office.**