

APPENDIX – A

[1- 4]

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Petitioner's initial Appendices

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Case No. 18-6238

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ORDER

DANIEL H. JONES

Plaintiff - Appellant

v.

JAMES F. GOODWIN, Judge

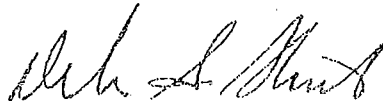
Defendant - Appellee.

Appellant having previously been advised that failure to satisfy certain specified obligations would result in dismissal of the case for want of prosecution and it appearing that the appellant has failed to satisfy the following obligation(s):

The proper fee was not paid by December 27, 2018.

It is therefore **ORDERED** that this cause be, and it hereby is, dismissed for want of prosecution.

ENTERED PURSUANT TO RULE 45(a),
RULES OF THE SIXTH CIRCUIT
Deborah S. Hunt, Clerk



Issued: January 17, 2019

4.7

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

DANIEL H. JONES,

Plaintiff,

v.

JAMES F. GOODWIN,

Defendant.

No. 3:18-CV-457-HSM-HBG

MEMORANDUM OPINION

The Court is in receipt of a pro se prisoner's civil rights complaint pursuant to 42 U.S.C. § 1983 [Doc. 2] and a motion for leave to proceed *in forma pauperis* [Doc. 1]. For the reasons set forth below, Plaintiff's motion for leave to proceed *in forma pauperis* [Doc. 1] will be **GRANTED** and this action will be **DISMISSED** for failure to state a claim upon which relief may be granted under § 1983.

I. FILING FEE

It appears from Plaintiff's motion for leave to proceed *in forma pauperis* [Doc. 1] that Plaintiff lacks sufficient financial resources to pay the filing fee. Accordingly, Plaintiff's motion for leave to proceed *in forma pauperis* [*Id.*] will be **GRANTED**. As Plaintiff is incarcerated in the Turney Center Industrial Complex ("Turney Center"), he will be **ASSESSED** the civil filing fee of \$350.00.

The custodian of Plaintiff's inmate trust account at the institution where he now resides will be **DIRECTED** to submit to the Clerk, U.S. District Court, 900 Georgia Avenue, Chattanooga, Tennessee 37402, as an initial partial payment, whichever is the greater of: (a) twenty percent (20%) of the average monthly deposits to Plaintiff's inmate trust account; or (b) twenty

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percent (20%) of the average monthly balance in his inmate trust account for the six-month period preceding the filing of the complaint. 28 U.S.C. § 1915(b)(1)(A) and (B). Thereafter, the custodian of Plaintiff's inmate trust account at the institution where he now resides shall submit twenty percent (20%) of Plaintiff's preceding monthly income (or income credited to Plaintiff's trust account for the preceding month), but only when such monthly income exceeds ten dollars (\$10.00), until the full filing fee of three hundred fifty dollars (\$350.00) as authorized under 28 U.S.C. § 1914(a) has been paid to the Clerk. 28 U.S.C. § 1915(b)(2).

The Clerk will be **DIRECTED** to send a copy of this memorandum opinion and the accompanying order to the Warden of the Turney Center and the Attorney General for the State of Tennessee to ensure that the custodian of Plaintiff's inmate trust account complies with the Prisoner Litigation Reform Act ("PLRA") with regard to payment of the filing fee. The Clerk will also be **DIRECTED** to forward a copy of this memorandum opinion and accompanying order to the Court's financial deputy.

II. SCREENING STANDARD

Under the Prison Litigation Reform Act ("PLRA"), district courts must screen prisoner complaints and shall, at any time, *sua sponte* dismiss any claims that are frivolous or malicious, fail to state a claim for relief, or are against a defendant who is immune. *See, e.g.*, 28 U.S.C. §§ 1915(e)(2)(B) and 1915(A); *Benson v. O'Brian*, 179 F.3d 1014 (6th Cir. 1999). The dismissal standard articulated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) and in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 554 (2007) "governs dismissals for failure state a claim under [28 U.S.C. §§ 1915(e)(2)(B) and 1915A] because the relevant statutory language tracks the language in Rule 12(b)(6)." *Hill v. Lappin*, 630 F.3d 468, 470–71 (6th Cir. 2010). Thus, to survive an initial review under the PLRA, a complaint "must contain sufficient factual matter, accepted as

true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). Courts liberally construe pro se pleadings filed in civil rights cases and hold them to a less stringent standard than formal pleadings drafted by lawyers. *Haines v. Kerner*, 404 U.S. 519, 520 (1972).

In order to state a claim under 42 U.S.C. § 1983, a plaintiff must establish that he was deprived of a federal right by a person acting under color of state law. *Black v. Barberton Citizens Hosp.*, 134 F.3d 1265, 1267 (6th Cir. 1998).

III. ANALYSIS

In his complaint, Plaintiff seeks to challenge Defendant Judge Goodwin's determination that Plaintiff's civil lawsuit alleging that his conviction(s) violated double jeopardy and that his sentence was improper was inappropriate [Doc. 2 p. 3]. Plaintiff therefore requests that this Court require Defendant Judge Goodwin and the Tennessee Court of Appeals to review his claims, as well as monetary and other damages [Id. at 5-6].

Federal courts, however, have no authority to review final judgments of state court judicial proceedings. *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476 (1983). Further, as nothing in the complaint suggests that Defendant Judge Goodwin lacked jurisdiction or that the acts set forth in the complaint were not judicial acts, Defendant Judge Goodwin is entitled to judicial immunity for any constitutional violation alleged in the complaint. See *King v. Love*, 766 F.2d 962, 966 (6th Cir. 1985) (holding that judges are entitled to absolute judicial immunity from suits for money damages, including § 1983 civil suits, for all actions taken in the judge's judicial capacity, unless the actions are taken in the complete absence of any jurisdiction or the act complained of is not a "judicial act").

IV. CONCLUSION

For the reasons set forth above, Plaintiff's motion for leave to proceed *in forma pauperis* [Doc. 1] will be **GRANTED**. Even liberally construing the complaint in favor of Plaintiff, however, it fails to state a claim upon which relief may be granted under § 1983. Accordingly, this action will be **DISMISSED** pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915(A).

The Court **CERTIFIES** that any appeal from this action would not be taken in good faith and would be totally frivolous. See Rule 24 of the Federal Rules of Appellate Procedure.

AN APPROPRIATE JUDGMENT ORDER WILL ENTER.

ENTER:

/s/ Harry S. Mattice, Jr.
HARRY S. MATTICE, JR.
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

DANIEL H. JONES,

Plaintiff,

v.

JAMES F. GOODWIN,

Defendant.

No. 3:18-CV-457-HSM-HBG

JUDGMENT ORDER

In accordance with the accompanying memorandum opinion:

1. Plaintiff's motion for leave to proceed *in forma pauperis* [Doc. 1] is **GRANTED**;
2. Plaintiff is **ASSESSED** the civil filing fee of \$350.00;
3. The custodian of Plaintiff's inmate trust account at the institution where he now resides is **DIRECTED** to submit the filing fee to the Clerk in the manner set forth in the memorandum opinion;
4. The Clerk is **DIRECTED** to send a copy of this memorandum opinion and the accompanying order to the Warden of the Turney Center Industrial Complex, the Attorney General for the State of Tennessee, and the Court's financial deputy; and
5. This pro se prisoner's civil rights complaint is **DISMISSED** pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915(A) for failure to state a claim upon which relief may be granted under 42 U.S.C. § 1983.

Because the Court **CERTIFIED** in the memorandum opinion that any appeal from this order would not be taken in good faith, should Plaintiff file a notice of appeal, he is **DENIED** leave to appeal *in forma pauperis*. See 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24.

The Clerk is **DIRECTED** to close the civil file.

SO ORDERED.

ENTER:

/s/ Harry S. Mattice, Jr.
HARRY S. MATTICE, JR.
UNITED STATES DISTRICT JUDGE

ENTERED AS A JUDGMENT
/s/ John L. Medearis
CLERK OF COURT

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Deborah S. Hunt
Clerk

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: February 01, 2019

Mr. Daniel H. Jones
Turney Center Industrial Complex
1499 R.W. Moore Memorial Highway
Only, TN 37140

Re: Case No. 18-6238, *Daniel Jones v. James Goodwin*
Originating Case No. : 3:18-cv-00457

Dear Mr. Jones:

This court has received your motion for reconsideration. Your case was dismissed on 01/17/19. Please be informed that you have not cured the defect which led to the dismissal of your appeal.

Because of this I regret to inform you that your motion will not be considered.

Sincerely yours,

s/Bryant L. Crutcher
Case Manager
Direct Dial No. 513-564-7013

Enclosure

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Deborah S. Hunt
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Filed: February 13, 2019

Mr. Daniel H. Jones
Turney Center Industrial Complex
1499 R.W. Moore Memorial Highway
Only, TN 37140

Re: Case No. 18-6238, *Daniel Jones v. James Goodwin*
Originating Case No.: 3:18-cv-00457

Dear Mr. Jones,

The enclosed petition for rehearing en banc is being returned to you unfiled.

Neither the Federal Rules of Appellate Procedure nor the Rules of the Sixth Circuit make any provision for en banc review of an order dismissing a case for failure to pay the filing fee. Therefore, the petition is not accepted for filing.

Sincerely yours,

s/Beverly L. Harris
En Banc Coordinator
Direct Dial No. 513-564-7077

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WESTLAW

Jones v. Sexton

United States District Court, E.D. Tennessee. | February 4, 2014 | Not Reported in F.Supp.3d | 2014 WL 415953 (Approx. 3 pages)

2014 WL 415953

Only the Westlaw citation is currently available.

United States District Court, E.D. Tennessee.

Daniel H. JONES, Petitioner,

v.

David A. SEXTON, Warden, Respondent.

No. 2:11-cv-302.

Feb. 4, 2014.

Attorneys and Law Firms

Daniel H. Jones, Only, TN, pro se.

Scott Crawford Sutherland, Tennessee Attorney General's Office, Nashville, TN, for Respondent.

MEMORANDUM OPINION

J. RONNIE GREER, District Judge.

*1 State prisoner Daniel H. Jones brings this *pro se* petition for a writ of habeas corpus under 28 U.S.C. § 2254, challenging his 2008 Sullivan County, Tennessee conviction for the possession of .5 grams of cocaine with the intent to sell, entered pursuant to a jury verdict, [Doc. 2]. Now before the Court are respondent's answer to the petition, [Doc. 16], copies of the state court record, [Doc. 17, Addenda 1-2], and petitioner's reply to the answer, [Doc. 18]. Thus, the case is ripe for disposition. For the reasons which follow, the petition will be DENIED.

I. Standard of Review

A state criminal defendant may obtain federal habeas relief if he can demonstrate that he is in custody pursuant to the judgment of a state court in violation of the Constitution or laws or treaties of the United States. 28 U.S.C. § 2254. Under Rule 8 of the Rules Governing Section 2254 Proceedings in the United States District Courts, a court is to determine, after a review of the entire record whether an evidentiary hearing is required. If a hearing is not required, the district judge may dispose of the case as justice dictates. After carefully reviewing the entire record, the Court finds it unnecessary to hold an evidentiary hearing and, thus, will decide this case on the pleadings and the record.

II. Factual and Procedural Background

The facts as presented by respondent in his answer are undisputed and were taken from the Tennessee Court of Criminal Appeals' decision on direct review of petitioner's conviction. See *State v. Jones*, No. E2010-00016-CCA-R3-CD, 2011 WL 2347711, *1-*3 (Tenn.Crim.App. June 6, 2011).

On October 20, 2005, officers executing a search warrant for a residence in Kingsport, Tennessee, found petitioner standing in the doorway of a bedroom located immediately to the right of the front door. When the bedroom was searched, the officers found a Tic Tac box containing over twenty-five rocks of crack cocaine under the mattress of the bed, a small bottle containing one rock of crack cocaine under the mattress, and a tin in the pocket of a shirt in a closet containing three or four rocks of crack cocaine. A plastic baggie containing crack cocaine was discovered in the bathroom. As a result of these discoveries, petitioner and four other individuals were arrested and taken to the police station. There, petitioner gave a statement, explaining that he visited the residence on a daily basis, but denying that he either smoked or sold crack cocaine. Despite the denial, petitioner was charged with the crack cocaine offense.

At trial, a witness (one of the five persons arrested at the residence) testified that the bottle containing one gram of crack cocaine found in the bedroom belonged to her and that petitioner had supplied her with the crack from a Tic Tac box, which he kept in his pants pocket. The witness further testified that, when the officers arrived at the door, petitioner placed the Tic Tac box under the mattress. The witness additionally stated that, about two

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weeks prior to the search, she had seen petitioner with a Tic Tac box with cocaine in it and had seen him sell the cocaine contained in the Tic Tac box in exchange for money.

*2 One of the officers involved in the search also testified that the number of the rocks of crack cocaine contained in the Tic Tac box was more than a typical user would have in his possession.

A second individual arrested following the search testified that he had bought the rock of crack cocaine contained in the plastic baggie located in the bathroom from petitioner and that petitioner frequently kept his crack cocaine in a Tic Tac box. This witness stated that he had never seen petitioner actually use crack cocaine.

On this and other evidence, petitioner was convicted as charged and received an eleven-year prison sentence. He was unsuccessful in his direct review proceedings. *State v. Jones*, 2011 WL 2347711, *perm. app. den.*, (Tenn.2011).

III. Discussion

Petitioner alleges, as his sole ground for habeas corpus relief, that he was denied a full and fair trial, equal protection, and due process of law when evidence of prior bad acts were admitted to corroborate coerced testimony by witnesses. Respondent maintains, in his answer, that this ground for relief was not exhausted properly in the state courts and that, due to the absence of any available state court remedies, the claim has been procedurally defaulted.

Under 28 U.S.C. § 2254(b)(1), a state prisoner's petition for a writ of habeas corpus will not be granted unless he has exhausted his available state court remedies, and he does so by "fairly presenting" the substance of each of his federal constitutional claims to the state courts for disposition. See *Hannah v. Conley*, 49 F.3d 1193, 1196 (6th Cir.1995). Claims offered to state courts in reliance solely on state law have not been fairly presented. *Blackmon v. Booker*, 394 F.3d 399, 400 (6th Cir.2004). Thus, a claim must be offered on a constitutional basis—not merely as one arising under state law. See *Duncan v. Henry*, 513 U.S. 364, 365–366, 115 S.Ct. 887, 130 L.Ed.2d 865 (1995) ("If state courts are to be given the opportunity to correct alleged violations of prisoners' federal rights, they must surely be alerted to the fact that the prisoners are asserting claims under the United States Constitution."); *Stanford v. Parker*, 266 F.3d 442, 451 (6th Cir.2001) (merely raising a claim under state law does not satisfy the exhaustion requirement); see also *Casella v. Clemons*, 207 F.3d 18, 21 (1st Cir.2000) (To give the state courts a fair opportunity to pass on a constitutional claim, "[t]he trappings of a federal claim must be likely to put a reasonable jurist on notice of the claim.").

A prisoner who has failed to present a federal claim in the state courts, and who is now barred by a state procedural rule from returning with his claim to those courts, has committed a procedural default. *Coleman v. Thompson*, 501 U.S. 722, 732, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991); *Pudelski v. Wilson*, 476 F.3d 594, 605 (6th Cir.2009). Federal review of a procedurally defaulted claim is foreclosed, unless the habeas petitioner can show cause to excuse his failure to comply with the state procedural rule and actual prejudice resulting from the alleged constitutional violation. *Coleman*, 501 U.S. at 732.

*3 Respondent contends that this issue has been procedurally defaulted because, although it was raised before the Court of Criminal Appeals, it was not raised as a federal constitutional violation but only as a claim based on state law. Petitioner denies, in his response, that he committed a procedural default, but his arguments do not actually address the particular default asserted by respondent, i.e., failure to present a claim to the state court as a constitutional matter.

The Court has reviewed petitioner's state court pleadings. (Addendum 2, Docs. 1, 4). In petitioner's brief on appeal to the Tennessee Court of Criminal Appeals, he argued that, under Rule 404(b) of the Tennessee Rules of Evidence, the inclusion of the prior bad acts evidence was more prejudicial than probative and that, for this reason, the evidence should have been ruled inadmissible. (*Id.*, Doc. 1). Moreover, petitioner did not suggest that the evidentiary ruling he was challenging was not only a violation of state law, but denied him the due process and equal protection of law guaranteed by the Fourteenth Amendment. The same holds true with respect to petitioner's brief supporting his application for permission to appeal to the Tennessee Supreme Court, (*Id.*, Doc. 4). Clearly, petitioner failed to raise the claim in the state courts as a constitutional violation and may not do so now, absent a showing of cause and prejudice. Here, nothing of the sort has been established, much less alleged, and federal review has been foreclosed by petitioner's procedural default.

IV. Conclusion

Based on the above reasoning, the petition will be DENIED and the case DISMISSED.

V. Certificate of Appealability

One final matter remains for discussion: whether to issue a certificate of appealability (COA) should petitioner file a notice of appeal. See 28 U.S.C. § 2253(c)(1). Petitioner qualifies for issuance of a COA if he has made a substantial showing of the denial of a constitutional right; he makes such a showing by demonstrating that reasonable jurists might question the correctness of the Court's procedural ruling. See *Slack v. McDaniel*, 529 U.S. 473, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000). The Court has found that his claim was procedurally defaulted and that he had failed to make a showing of cause and prejudice to overcome this obstacle. The Court now finds that reasonable jurists could not disagree with the resolution of this claim and could not conclude that it is "adequate to deserve encouragement proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327, 123 S.Ct. 1029, 154 L.Ed.2d 931 (2003). No COA shall issue. 28 U.S.C. § 2253; Fed. R.App. P. 22(b).

A separate order will enter.

All Citations

Not Reported in F.Supp.3d, 2014 WL 415953

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APPENDIX – B
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Petitioner’s initial Appendices

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WESTLAW

§ 27-1-118. Supreme court; opinions
T. C. A. § 27-1-118 - West's Tennessee Code Annotated - Title 27. Appeal and Review (Approx. 2 pages)

West's Tennessee Code Annotated
Title 27. Appeal and Review
Chapter 1. General Provisions

T. C. A. § 27-1-118

§ 27-1-118. Supreme court; opinions

Currentness

The judges of the supreme court shall give written opinions, stating the points of law on which the action of the court is based, in all cases determined by them, except actions in which there is no defense.

Credits

1829 Acts, c. 60, § 2.

Formerly 1858 Code, § 3931; Shannon's Code, § 5735; 1932 Code, § 9924; § 27-120.

Notes of Decisions (5)

T. C. A. § 27-1-118, TN ST § 27-1-118

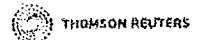
Current with laws from the 2018 Second Reg. Sess. of the 110th Tennessee General Assembly. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text.

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IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

FILED

10/10/2018

Clerk of the
Appellate Courts

DANIEL H. JONES v. STATE OF TENNESSEE

Criminal Court for Sullivan County
No. S52468, S53124, S53126, S53127

No. E2017-02026-SC-R11-CO

ORDER

Upon consideration of the application for permission to appeal of Daniel H. Jones and the record before us, the application is denied.

PER CURIAM

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citation is currently available.

SEE RULE 19 OF THE RULES OF THE COURT OF CRIMINAL APPEALS RELATING TO
PUBLICATION OF OPINIONS AND CITATION OF UNPUBLISHED OPINIONS.

Court of Criminal Appeals of Tennessee.

DANIEL H. JONES

v.

STATE OF TENNESSEE

No. E2017-02026-CCA-R3-CO
08/02/2018

Appeal from the Criminal Court for Sullivan County Nos. S52468, S53124, S53126, and
S53127 James F. Goodwin, Judge

The pro se Appellant, Daniel H. Jones, appeals from the Sullivan County Criminal Court's order denying his motion for declaratory relief. Tenn. Code Ann. § 29-14-102(a). The State has filed a motion requesting that this court affirm the trial court's denial of relief pursuant to Rule 20 of the Rules of the Tennessee Court of Criminal Appeals. Following our review, we conclude that the State's motion is well-taken and affirm the judgment of the Sullivan County Criminal Court.

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

Attorneys and Law Firms

Daniel H. Jones, Only, Tennessee, Pro Se.

Herbert H. Slatery III, Attorney General and Reporter; Courtney N. Orr, Assistant Attorney General; and Barry P. Staubus, District Attorney General, for the appellee, State of Tennessee.

NORMA MCGEE OGLE, J., delivered the opinion of the Court, in which JAMES CURWOOD WITT, JR., and D. KELLY THOMAS, JR., JJ., joined.

MEMORANDUM OPINION

NORMA MCGEE OGLE, JUDGE

I. Factual Background

*1 The procedural history of the challenged judgments was summarized in this court's 2015 opinion affirming the trial court's denial of the Appellant's motion to correct illegal sentences. See Tenn. R. Crim. P. 36.1.

In August of 2008, Defendant was convicted of possession of .5 grams or more of cocaine with the intent to sell in Case Number S53,124. Defendant was sentenced to eleven years in incarceration as a Range I, standard offender for this conviction. Defendant filed a direct appeal of this conviction. This Court found that the evidence was sufficient and that the trial court did not abuse its discretion in admitting the evidence. See *State v. Daniel H. Jones*, No. E2010-00016-CCA-R3-CD, 2011 WL 2347711, at *1 (Tenn.Crim.App. June 6, 2011), *perm. app. denied* (Tenn. Sept. 21, 2011) ("*Jones I*").¹

On the same day in 2008 that the trial court sentenced Defendant in Case Number S53,124, Defendant pled guilty in three additional cases. In Case Number S52,468, Defendant pled guilty to one count of aggravated assault, a Class C felony. In Case Number S53,126, Defendant pled guilty to one count of possession of .5 grams or more of cocaine for sale, a Class B felony; one count of drug paraphernalia, a Class A misdemeanor; and one count of maintaining a dwelling where drugs are used or sold, a Class D felony. In Case Number S53,127, Defendant pled guilty to possession of cocaine for sale, a Class C felony. For all felony offenses, Defendant was sentenced as a Range I, standard offender.

Pursuant to the plea agreement, Defendant was sentenced, in Case Number S52,468, to a sentence of four years for aggravated assault; in Case Number S53,126, to sentences of twelve years for possession with intent to sell, eleven months and twenty-nine days for

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possession of drug paraphernalia, and two years for maintaining a dwelling where drugs are used or sold; and in Case Number S53,127, to a sentence of four years for possession with intent to sell. *Id.* The sentences in each case were ordered to be served consecutively, with the sentences in Case Number S53,126 running concurrently with each other, for a total effective sentence of twenty years as a Range I, standard offender. *Id.* This effective twenty-year sentence was ordered to be served consecutively to the eleven-year sentence in Case Number S53,124, for a total sentence of thirty-one years. See *State v. Daniel Henderson Jones*, No. E2009-00182-CCA-R3-CD, 2010 WL 2812621, at *1 (Tenn.Crim.App. July 16, 2010), *perm. app. denied* (Tenn. Nov. 12, 2010) ("*Jones II*").²

Defendant filed a motion for reduction of sentence, in which he alleged that the total length of his sentences exceeded the sentencing range for a Range I, standard offender for a single Class B felony. *Id.* This Court determined that "the sentences were imposed pursuant to a plea agreement, and ... all elements of the sentencing decision were agreed to by the parties and not open to consideration by the trial court." *Id.* at *3. Because "no new developments" had occurred, this Court determined in *Jones II* that the trial court did not abuse its discretion in denying Defendant's motion for reduction of sentence. *Id.*

*2 On October 2, 2014, Defendant filed a motion for correction of an illegal sentence pursuant to Rule 36.1 of the Tennessee Rules of Criminal Procedure ("the Rule"). Accompanying the motion were an affidavit and memorandum of law. Defendant argued that his sentence was "beyond the range of his punishment ... for his class of offense." In other words, he complains that he was sentenced to more than twelve years as a Range I, standard offender for a Class B felony. The trial court dismissed the motion without a hearing and without appointment of counsel, finding as follows:

✓ None of [Defendant's] class B felony convictions are for more than twelve years. [Defendant] has failed to state a colorable claim as to his assertion. The length of sentence in each of [Defendant's] cases is authorized by statute. [Defendant] did not receive a sentence outside of Range I for any class of felony for which he was convicted.

✓ [Defendant] also makes vague assertions that he did not understand his sentence or that he believed he was being sentenced as a mitigated offender. However the guilty plea acceptance form belies these assertions because it clearly outlines the length of the agreed sentence as well as the range of punishment. ...

State v. Daniel H. Jones, No. E2014-02463-CCA-R3-CD, 2015 WL 4505959, at *1-2 (Tenn. Crim. App. July 24, 2015) (footnotes omitted), *perm. app. denied* (Tenn. Oct. 16, 2015). This court affirmed the trial court's denial of relief, concluding that the Appellant failed to state a colorable claim for Rule 36.1 relief. *Id.* at *3.

On July 28, 2017, the appellant filed in the Sullivan County Criminal Court a "Request for Declaration of Rights," citing Tennessee Code Annotated section 29-14-102(a), the Declaratory Judgment Act. Although the claims asserted are ambiguous, the appellant sought relief from his judgments based upon allegations of double jeopardy violations and, once again, a claim of illegal sentencing. The appellant also sought damages totaling \$300,000 in his request. On September 18, 2017, the trial court summarily denied relief, ruling that declaratory relief was not an appropriate method to challenge sentencing judgments. The appellant filed a timely notice of appeal to this court.

II. Analysis

The State argues that the action is barred by the doctrine of sovereign immunity. In considering a claim brought pursuant to the Declaratory Judgment Act, this court has observed that

.... Article I, section 17 of the Tennessee Constitution provides, "Suits may be brought against the State in such manner and in such courts as the Legislature may by law direct. The traditional construction of the clause is that suits cannot be brought against the State unless explicitly authorized by statute." *Colonial Pipeline Co. v. Morgan*, 263 S.W.3d 827, 849 (Tenn. 2008). Tennessee Code Annotated section 20-13-102 (2009) further provides: "No court in the state shall have any power, jurisdiction, or authority to entertain any suit against the state, or against any officer of the state acting by authority of the state, with a view to reach the state, its treasury, fund, or property. ..."

James Henry Dellinger v. State, No. E2013-02094-CCA-R3-ECN, 2015 WL 4931576, at *14 (Tenn. Crim. App. Aug. 18, 2015).

In this matter, the Appellant challenges the imposition of sentences in his original guilty-pleaded convictions, seeking a declaration that the sentences are illegal, in addition to monetary damages. "[B]ecause the [Appellant's] declaratory judgment action was not raised as a facial constitutional challenge to enjoin a state official from enforcing an unconstitutional statute," the Appellant is not entitled to relief. Id. Furthermore, the trial court correctly ruled that the Appellant cannot seek declaratory relief to challenge the length of his sentence.

"The remedies of declaratory judgment, injunctive relief, civil rights remedies and mandamus cannot be used by an accused to challenge the length of his sentence." Herman Dezun v. Wade Mathney, C.C.A. No. 88-225-III, 1989 WL 14155, at *1 (Tenn. Crim. App., at Nashville, Feb. 24, 1989), perm. app. denied (Tenn. June 5, 1989); see also Joby Lee Teal v. The Criminal Court of Shelby County, Tennessee, et al., No. W2011-02126-CCA-R3-CO, 2012 WL 2131108 (Tenn. Crim. App., at Jackson, June 13, 2012).

III. Conclusion

*3 Accordingly, we affirm the judgment of the Sullivan County Criminal Court pursuant to Rule 20 of the Rules of the Tennessee Court of Criminal Appeals.

All Citations

Slip Copy, 2018 WL 3689492

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IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

FILED

03/22/2018

Clerk of the
Appellate Courts

DANIEL H. JONES v. STATE OF TENNESSEE

Criminal Court for Sullivan County
No. S52468, S53124, S53126, S53127

No. E2017-02026-CCA-R3-CO

ORDER

Before the court is the pro se appellant's request to transfer this appeal to the Court of Appeals. Upon full consideration, the request is DENIED.

Norma McGee Ogle
NORMA MCGEE OGLE, JUDGE

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FILED

IN THE CRIMINAL COURT FOR SULLIVAN COUNTY

AT BLOUNTVILLE, TENNESSEE 2017 SEP 18 AM 9:44

TOMMY R. KERNS, ^{SR} D.C.
CIRCUIT COURT CLERK
SULLIVAN COUNTY, TN

DANIEL H. JONES,

PETITIONER,

VS.

STATE OF TENNESSEE,

RESPONDENT.

CASE No.: S52,468
S53,124
S53,126
S53,127

ORDER DISMISSING REQUEST FOR
DECLARATION OF RIGHTS

THIS MATTER comes before the Court on a Request for Declaration of Rights, filed on 28 July 2017 in case numbers S52,468; S53,124; S53,126 & S53,127. A review of the files in the Sullivan County Circuit Clerk's Office and the opinion of the Tennessee Court of Criminal Appeals decision in *State of Tennessee vs. Daniel Henderson Jones*, 2010 WL 2812624 (Tenn.Crim.App) reveals that on 24 January 2007 the Sullivan County Grand Jury returned a true presentment charging Petitioner with one count of aggravated rape (class A felony) in S52,468; possession of 1/2 gram or more of cocaine for sale or delivery (class B felony), possession of drug paraphernalia (class A misdemeanor), and maintaining a dwelling where drugs are used or sold (class D felony) in S53,126; possession of 1/2 gram or more of cocaine for sale or delivery (class B felony) in S53,127; and possession of 1/2 gram or more of cocaine for sale or delivery (class B felony) in S53,124.

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Petitioner was convicted by a jury of possession of 1/2 gram or more of cocaine for sale or delivery in case number S53,124 on 29 August 2008. Petitioner was sentenced to eleven years, as a range I, standard offender in the Tennessee Department of Corrections. The uniform judgment document was entered on 16 October 2008.

In case numbers S52,468 (amended to aggravated assault (class C felony)), S53,126 and S53,127 (reduced to possession of cocaine for sale (class C felony)) the defendant entered pleas of guilty and received sentences of 4 years, 12 years and 4 years, respectively. Also pursuant to the plea agreement, the sentences in S53,126 were ordered to be served concurrently on another but consecutively to the other cases, which were also ordered to be served consecutively. The plea cases were ordered to be served consecutively to the trial case, resulting in an effective sentence of thirty-one years as a range I, standard offender.

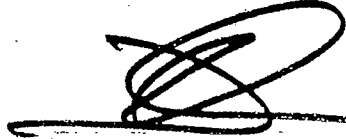
Petitioner was represented at trial, at the plea hearing, and on numerous appeals by Gregory W. Francisco of the Kingsport bar.

Petitioner filed a motion to correct illegal sentence pursuant to Rule 36.1 which was denied. The Court of Criminal affirmed in State of Tennessee v. Daniel H. Jones, E2014-02463-CCA-R3-CD (Tenn. Crim. App. July 24, 2015).

Petitioner has now filed a request for declaration of rights pursuant to T.C.A. §29-14-100 *et seq.* The Court finds that this civil remedy is not an appropriate means by which to challenge a final judgment in a criminal case. Therefore, the request should be denied and dismissed without a hearing.

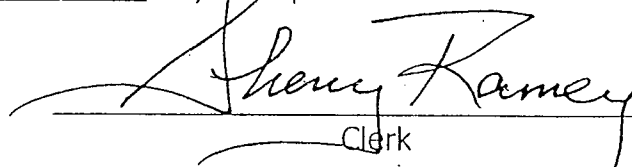
THEREFORE, IT IS HEREBY ORDERED that the request for declaration of rights filed in this matter is dismissed without a hearing, costs taxed to the Petitioner.

ENTER this the 18 day of September 2017


James F. Goodwin
Criminal Court Judge

CERTIFICATE

I hereby certify that a true and exact copy of the foregoing Order has been mailed to Daniel H. Jones, TDOC #443638, T.C.I.X. – Main, 2B-1-26, 1499 R.W. Moore Memorial Hwy., Only, TN 37140, and the Tennessee State Attorney General, 450 James Robertson Parkway, Nashville, TN 37243, via the U.S. Mail, and to the Office of the District Attorney General, by placing a copy in the mail drop box located in the Office of the Circuit Court Clerk on this the 18th day of September 2017.


Clerk

APPEND IX – C
[1- 19]
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Petitioner's initial Appendices

“C”

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<i>28 USC §1915 Proceedings in Forma pauperis.....</i>	C-3
<i>TCA § 41-21-807(a)(4) Inmate pauperis Filings</i>	C-4
<i>Tenn. Constitution; Art.I, §10, Double jeopardy</i>	C-5
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<i>TCA §29-14-102; Powers and Duties</i>	C-11
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§ 1. Separation of powers; branches of government
West's Tennessee Code Annotated Constitution of the State of Tennessee (Approx. 1 page)

West's Tennessee Code Annotated
Constitution of the State of Tennessee
Article II. Distribution of Powers

TN Const. Art. 2, § 1

§ 1. Separation of powers; branches of government

Currentness

The powers of the Government shall be divided into three distinct departments: the Legislative, Executive, and Judicial.

Notes of Decisions (296)

Const. Art. 2, § 1, TN CONST Art. 2, § 1

Current through the 2016 general election. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text

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§ 2. Separation of powers; persons belonging to different branches
West's Tennessee Code Annotated Constitution of the State of Tennessee (Approx. 2 pages)

West's Tennessee Code Annotated
Constitution of the State of Tennessee
Article II. Distribution of Powers

TN Const. Art. 2, § 2

§ 2. Separation of powers; persons belonging to different branches

Currentness

No person or persons belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in the cases herein directed or permitted.

Notes of Decisions (507)

Const. Art. 2, § 2, TN CONST Art. 2, § 2
Current through the 2016 general election. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text

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Unconstitutional or Preempted Vaguely Called into Doubt by *Holland v. Philadelphia Stadium*,
111 F.3d 1010 (Colo.) Aug. 07, 2007

Effective: April 26, 1996

28 U.S.C.A. § 1915

§ 1915. Proceedings in forma pauperis

Conclusions

(a)(1) Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

(2) A prisoner seeking to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security therefor, in addition to filing the affidavit filed under paragraph (1), shall submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined.

(3) An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

(b)(1) Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of--

(A) the average monthly deposits to the prisoner's account; or

(B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

(2) After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

(3) In no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action or criminal judgment.

(4) In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.

(c) Upon the filing of an affidavit in accordance with subsections (a) and (b) and the prepayment of any partial filing fee as may be required under subsection (b), the court may direct payment by the United States of the expenses of (1) printing the record on appeal in any civil or criminal case, if such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United States magistrate judge in any civil or criminal case, if such transcript is required by the district court, in the case of proceedings conducted under section 636(b) of this title or under section 3401(b) of title 18, United States Code; and (3) printing the record on appeal if such printing is required by the appellate court, in the case of proceedings conducted pursuant to section 636(c) of this title. Such expenses shall be paid when authorized by the Director of the Administrative Office of the United States Courts.

CS

West's Tennessee Code Annotated
Title 41. Correctional Institutions and Inmates
Chapter 21. Inmates
Part 8. Lawsuits by Inmates (Refs & Annos)

Effective: August 11, 2010

T. C. A. § 41-21-807

§ 41-21-807. Payment of filing fees, court costs and other expenses by
inmate; frivolous actions

Currentness

(a) An inmate seeking to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security for the fees, in addition to filing the affidavit required by § 41-21-805, shall submit a certified copy of the trust fund account statement, or the institutional equivalent, for the inmate for the six-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each facility at which the inmate is or was confined.

(b)(1) If an inmate brings a civil action or files an appeal in forma pauperis, the inmate shall be required to pay the full amount of the filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of twenty percent (20%) of the greater of the average monthly:

(A) Deposits to the inmate's account; or

(B) Balance in the inmate's account for the six-month period immediately preceding the filing of the complaint or notice of appeal.

(2) After payment of the initial partial filing fee, the inmate shall be required to make monthly payments of twenty percent (20%) of the preceding month's income credited to the inmate's account. The agency having custody of the inmate shall forward payments from the inmate's account to the clerk of the court each time the amount in the account exceeds ten dollars (\$10.00) until the filing fees are paid.

(3) In no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action or criminal judgment.

(4) In no event shall an inmate be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the inmate has no assets and no means by which to pay the initial partial filing fee.

(c) In no event shall an inmate bring a civil action or appeal a judgment in a civil action or proceeding under this section if the inmate has, on three (3) or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of this state or the United States that was dismissed on the grounds that it was frivolous, malicious or failed to state a claim upon which relief may be granted, unless the inmate

C4

1 2
(2 screens)

TN Const. Art. 1, § 10

West's Tennessee Code Annotated Currentness

Constitution of the State of Tennessee

▣ Article I. Declaration of Rights (Refs & Annos)

→ **§ 10. Double jeopardy**

That no person shall, for the same offence, be twice put in jeopardy of life or limb.

LAW REVIEW AND JOURNAL COMMENTARIES

Tennessee Criminal Constitutional Law from 1974-1980: A Survey and Analysis. R. Tim Wurz, 12 Mem. St. U. L. Rev. 249 (1982).

LIBRARY REFERENCES

05

(2 screens)

TN Const. Art. 2, § 2

West's Tennessee Code Annotated Currentness
Constitution of the State of Tennessee

Article II. Distribution of Powers

→§ 2. Separation of powers; persons belonging to different branches

No person or persons belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in the cases herein directed or permitted.

LAW REVIEW AND JOURNAL COMMENTARIES

CG

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§ 8. Deprivation of life, liberty or property under law; due process
West's Tennessee Code Annotated | Constitution of the State of Tennessee (Approx. 2 pages)

West's Tennessee Code Annotated
Constitution of the State of Tennessee
Article I. Declaration of Rights (Refs & Annos)

TN Const. Art. 1, § 8

§ 8. Deprivation of life, liberty or property under law; due process

Currentness

That no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers or the law of the land.

Editors' Notes

LAW REVIEW AND JOURNAL COMMENTARIES

Abortion, Amendment 1, and the Future of Procreational Rights Under the Tennessee Constitution. Glenn Harlan Reynolds, 83 Tenn. L. Rev. 69 (Fall 2015).
Comment: Family Law--Davis v. Davis: A Step Back for the Right to Procreate. Kimberly L. Harris, 23 Mem. St. U. L. Rev. 399 (1993).
The Last Line of Defense: The Tennessee Constitution and the Right of Privacy. Catherine Albisa, 25 U. Mem. L. Rev. 3 (1994).

RESEARCH REFERENCES

ALR Library

86 ALR 6th 1, Validity of Grandparent Visitation Statutes.
5 ALR 6th 133, Validity of Medical Malpractice Statutes of Repose.
31 ALR 6th 523, Validity, Construction, and Application of State Statutes Prohibiting, Limiting, or Regulating Fishing or Hunting in State by Nonresidents.
61 ALR 5th 151, Rights of Unwed Father to Obstruct Adoption of His Child by Withholding Consent.
83 ALR 5th 541, Right of Indigent Defendant in State Criminal Prosecution to Ex Parte in Camera Hearing on Request for State-Funded Expert Witness.
119 ALR 5th 315, Validity of State "Informed Consent" Statutes by Which Providers of Abortions Are Required to Provide Patient Seeking Abortion With Certain Information.
14 ALR 2nd 73, Constitutional Rights of Owner as Against Destruction of Building by Public Authorities.
58 ALR 2nd 903, Right of Student to Hearing on Charges Before Suspension or Expulsion from Educational Institution.
100 ALR 2nd 1141, Right to Dismiss Public School Teacher on Ground that Services Are No Longer Needed.
1 ALR 757, Constitutionality of Statute Exempting Proceeds of Life or Benefit Insurance.
12 ALR 679, Constitutionality of City or Town Planning Statutes or Ordinances.
127 ALR 1298, Teachers' Tenure Statutes.
111 ALR 185, Constitutionality and Construction of Gasoline Inspection and Tax Statutes.
99 ALR 613, Constitutionality of Statute Requiring Protection Against Occupational or Industrial Diseases and Accidents With Respect to Definiteness and Completeness.
54 ALR 1030, Zoning: Creation by Statute or Ordinance of Restricted Residence Districts Within Municipality from Which Business Buildings or Multiple Residences Are Excluded.
43 ALR 408, Attack on Constitutionality of Statute Under Which Officer Acts, as Affecting Question Whether Action or Suit Against Him is to be Deemed an Action or Suit Against the State.

Encyclopedias

Am. Jur. 2d Schools § 335, Notice and Hearing--Statutory Rights.

Treatises and Practice Aids

07

9. Rights of accused | WestlawNext

WESTLAW

§ 9. Rights of accused

West's Tennessee Code Annotated | Constitution of the State of Tennessee (Approx. 2 pages)

West's Tennessee Code Annotated
 Constitution of the State of Tennessee
 Article I: Declaration of Rights (Refs & Annos)

TN Const. Art. 1, § 9

§ 9. Rights of accused

Currentness

That in all criminal prosecutions, the accused hath the right to be heard by himself and his counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof, to meet the witnesses face to face, to have compulsory process for obtaining witnesses in his favor, and in prosecutions by indictment or presentment, a speedy public trial, by an impartial jury of the County in which the crime shall have been committed, and shall not be compelled to give evidence against himself.

Editors' Notes

RESEARCH REFERENCES

Treatises and Practice Aids

Tenn. Hndbk., Tennessee Criminal Trial Practice § 20:9, Peremptory Challenges--
 Limitations--Batson v. Kentucky.

UNITED STATES SUPREME COURT

Comments on silence of defendant,

• Jury instructions

- Instruction by court to ignore defendants' silence, see Lakeside v. Oregon, 1978, 98 S.Ct. 1091, 435 U.S. 333, 55 L.Ed.2d 319.
- Jury instructions, silence of accused, no adverse influence, see Carter v. Kentucky, 1981, 101 S.Ct. 1112, 450 U.S. 288, 67 L.Ed.2d 241, on remand 620 S.W.2d 320.
- Silence of defendant, instructions and admonitions, see James v. Kentucky, 1984, 104 S.Ct. 1830, 466 U.S. 341, 80 L.Ed.2d 346, rehearing denied 104 S.Ct. 3565, 467 U.S. 1268, 82 L.Ed.2d 866, on remand 679 S.W.2d 238.

Confrontation of witnesses,

• Confessions of accomplices and codefendants

- Accomplice's confession, introduction for purposes of rebutting testimony concerning coercive derivation of defendant's confession, see Tennessee v. Street, 1985, 105 S.Ct. 2078, 471 U.S. 409, 85 L.Ed.2d 425.
- Codefendant's confession as substantive evidence against defendant, see Lee v. Illinois, U.S. Ill. 1986, 106 S.Ct. 2056, 476 U.S. 530, 90 L.Ed.2d 514, on remand 115 Ill.Dec. 217, 164 Ill.App.3d 155, 517 N.E.2d 628.
- Interlocking confessions, nontestifying codefendant, see Cruz v. New York, U.S.N.Y. 1987, 107 S.Ct. 1714, 481 U.S. 186, 95 L.Ed.2d 162, on remand 519 N.Y.S.2d 959, 70 N.Y.2d 733, 514 N.E.2d 379.
- Nontestifying accomplice, confrontation clause, statements against penal interest, residual trustworthiness test, admission of nontestifying accomplice's confession, see Lilly v. Virginia, 1999, 119 S.Ct. 1887, 527 U.S. 116, 144 L.Ed.2d 117, on remand 523 S.E.2d 208, 258 Va. 548.
- Nontestifying codefendant, limiting instructions and redaction of confession to eliminate references to defendant, see Richardson v. Marsh, U.S.Mich. 1987, 107 S.Ct. 1702, 481 U.S. 200, 95 L.Ed.2d 176.

Effectiveness of counsel,

• In general

- Counsel performed deficiently in believing that state funding for firearms expert was capped, see Hinton v. Alabama, 2014, 134 S.Ct. 1081, 188 L.Ed.2d 1. Criminal Law
 1931

WESTLAW

§ 17. Remedies in courts, suits against state

West's Tennessee Code Annotated | Constitution of the State of Tennessee (Approx. 2 pages)

West's Tennessee Code Annotated
 Constitution of the State of Tennessee
 Article 1. Declaration of Rights (Refs. & Annos)

TN Const. Art. 1, § 17

§ 17. Remedies in courts, suits against state

Currentness

That all courts shall be open; and every man, for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and ~~right~~ and justice administered without sale, denial, or delay. Suits may be brought against the State in such manner and in such courts as the Legislature may by law direct.

Editors' Notes

LAW REVIEW AND JOURNAL COMMENTARIES

Civil Procedure----Mills v. Wong: Procedural Due Process Does Not Toll the Tennessee Medical Malpractice ~~Statute~~ of Repose. Laura Martin, 36 U. Mem. L. Rev. 805 (2006).

RESEARCH REFERENCES

ALR Library

5 ALR 6th 133, Validity of Medical Malpractice ~~Statutes~~ of Repose.
 43 ALR 408, Attack on Constitutionality of ~~Statute~~ Under Which Officer Acts, as Affecting Question Whether Action or Suit Against Him is to be Deemed an Action or Suit Against the State.

NOTES OF DECISIONS

Open courts

Tennessee's products liability ~~statute~~ of repose did not violate equal protection guarantees of United States and Tennessee Constitution or "open courts" provision of Tennessee Constitution with respect to hemophiliac who allegedly contracted Acquired Immune Deficiency Syndrome (AIDS) from blood clotting factor concentrate manufactured by defendant, despite claim that persons exposed to AIDS should be treated like asbestos victims, who are exempted from limitations of ~~statute~~ of repose, because both diseases involve long latency periods. U.S.C.A. Const. Amend. 14; Tenn. Const. Art. 1, § 17; Art. 11, § 8; T.C.A. § 29-28-103(a). Spence v. Miles Laboratories, Inc., 1994, 37 F.3d 1185. Constitutional Law ~~2315~~; Constitutional Law ~~3195~~; Limitation Of Actions ~~4~~(2)

Incarcerated juveniles' constitutional ~~right~~ of access to courts ~~entitled~~ them to access to attorney; merely providing access to law library would fail to assure meaningful access. U.S.C.A. Const. Art. 4, § 2, cl. 1; Amends. 1, 5, 8, 14. John L. v. Adams, 1992, 969 F.2d 228, rehearing denied. Constitutional Law ~~2325~~; Infants ~~3137~~

Incarcerated juvenile's constitutional ~~right~~ of access to courts extended to § 1983 actions not involving constitutional ~~rights~~. 42 U.S.C.A. § 1983; U.S.C.A. Const. Art. 4, § 2, cl. 1; Amends. 1, 5, 8, 14. John L. v. Adams, 1992, 969 F.2d 228, rehearing denied. Constitutional Law ~~2325~~; Infants ~~3137~~

Incarcerated juveniles' ~~right~~ of access to courts did not ~~entitle~~ them to affirmative legal assistance on treatment and education issues arising solely under Tennessee law. U.S.C.A. Const. Art. 4, § 2, cl. 1; Amends. 1, 5, 8, 14. John L. v. Adams, 1992, 969 F.2d 228, rehearing denied. Constitutional Law ~~2325~~; Infants ~~3137~~

In order to assure that incarcerated persons have meaningful access to courts, states are required to provide affirmative assistance in preparation of legal papers in cases involving constitutional ~~rights~~ and other civil ~~rights~~ actions related to incarceration. U.S.C.A. Const. Art. 4, § 2, cl. 1; Amends. 1, 5, 8, 14. John L. v. Adams, 1992, 969 F.2d 228, rehearing denied. Constitutional Law ~~2325~~

WESTLAW

§ 29-14-110. Relief

West's Tennessee Code Annotated Title 29. Remedies and Special Proceedings (Approx. 2 pages)

West's Tennessee Code Annotated

Title 29. Remedies and Special Proceedings

Chapter 14. Declaratory Judgments (Refs & Annos)

T. C. A. § 29-14-110

§ 29-14-110. Relief

Currentness

(a) Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper.

(b) The application therefor shall be by petition to a court having jurisdiction to grant the relief.

(c) If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree, to show cause why further relief should not be granted forthwith.

Credits

1923 Pub. Acts, c. 29, § 8.

Formerly Shannon's Code Supp., § 4726a8; 1932 Code, § 8842; § 23-1110.

Notes of Decisions containing your search terms (0)

View all 4

T. C. A. § 29-14-110, TN ST § 29-14-110

Current through end of the 2017 First Regular Session of the 110th Tennessee General Assembly.

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§ 29-14-102. Powers and duties

West's Tennessee Code Annotated | Title 29. Remedies and Special Proceedings (Approx. 2 pages)

West's Tennessee Code Annotated
 Title 29. Remedies and Special Proceedings
 Chapter 14. Declaratory Judgments (Refs & Annos)

T. C. A. § 29-14-102

§ 29-14-102. Powers and duties

Currentness

(a) Courts of record within their respective jurisdictions have the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.

(b) No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for.

(c) The declaration may be either affirmative or negative in form and effect; and such declaration shall have the force and effect of a final judgment or decree.

Credits

1923 Pub. Acts, c. 29, § 1.

Formerly Shannon's Code Supp., § 4726a1; 1932 Code, § 8835; § 23-1102.

Relevant Notes of Decisions (73) View All 151

Notes of Decisions listed below contain your search terms.

Liberality of construction

The declaratory judgment statute should be liberally construed in favor of person seeking relief in a proper case to the end that rights and interests be expeditiously determined. T.C.A. §§ 23-1101 et seq., 23-1102. Tennessee Farmers Mut. Ins. Co. v. Hammond, 1956, 290 S.W.2d 860, 4 McCanless 106, 200 Tenn. 106. Declaratory Judgment 26

The declaratory judgment statute will be liberally construed in favor of person seeking relief under its provisions, but some limitation must be placed upon operation of statute, and therefore petition for declaratory judgment, filed by one who had appealed to circuit court from city court conviction for violation of ordinance should have been dismissed, when it appeared from face of bill that identical question, with regard to constitutionality of ordinance, as well as same litigants were involved in the two proceedings. Code, § 8835 et seq. City of Johnson City v. Caplan, 1952, 253 S.W.2d 725, 194 Tenn. 496. Declaratory Judgment 26; Declaratory Judgment 128

Purposes

Purpose of Declaratory Judgment Act is to settle and afford relief from uncertainty and insecurity with respect to right, status, and other legal relations. T.C.A. § 23-1101 et seq. Snow v. Pearman, 1968, 436 S.W.2d 861, 26 McCanless 458, 222 Tenn. 458. Declaratory Judgment 24

Purpose of declaratory judgments act is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and act should be liberally construed and administered. T.C.A. §§ 23-1101 et seq., 23-1113. Shelby County Bd. of Com'rs v. Shelby County Quarterly Court, 1965, 392 S.W.2d 935, 20 McCanless 470, 216 Tenn. 470. Declaratory Judgment 24; Declaratory Judgment 26

The primary purpose of the Uniform Declaratory Judgment Act is the construction of definitely stated rights, status and other legal relations, commonly expressed in written instruments, though not confined thereto. Code 1932, § 8835 et seq. Hinchman v. City Water Co., 1943, 167 S.W.2d 986, 179 Tenn. 545. Declaratory Judgment 24

Availability of declaratory relief--In general

West's Tennessee Code Annotated
Title 29. Remedies and Special Proceedings
Chapter 14. Declaratory Judgments (Refs & Annos)

T. C. A. § ~~29-14-108~~

§ ~~29-14-108~~. Fact issues

Currentness

When a proceeding under this chapter involves the determination of an issue of fact, such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending.

Credits

C12

T. C. A. § 29-20-102

West's Tennessee Code Annotated Currentness

Title 29. Remedies and Special Proceedings

Chapter 20. Governmental Tort Liability

Part 1. General Provisions (Refs & Annos)

→§ 29-20-102. Definitions

As used in this chapter, unless the context otherwise requires:

(1) "Claim" means any claim brought against a governmental entity or its employee as permitted by this chapter;

(2) "Employee" means and includes any official (whether elected or appointed), officer, employee or servant, or any member of any board, agency, or commission (whether compensated or not), or any officer, employee or servant thereof, of a governmental entity, including the sheriff and the sheriff's employees and, further including regular members of voluntary or auxiliary firefighting, police, or emergency assistance organizations;

(3)(A) "Governmental entity" means any political subdivision of the state of Tennessee including, but not limited to, any municipality, metropolitan government, county, utility district, school district, nonprofit volunteer fire department receiving funds appropriated by a county legislative body or a legislative body of a municipality, human resource agency, community action agency or nonprofit corporation that administers the Head Start or Community Service Block Grant programs, public building authority, and development district created and existing pursuant to the constitution and laws of Tennessee, or any instrumentality of government created by any one (1) or more of the named local governmental entities or by an act of the general assembly;

(B)(i) In any county having a population not less than eight hundred ninety-seven thousand four hundred (897,400) and not more than eight hundred ninety-seven thousand five hundred (897,500), according to the 2000 federal census or any subsequent federal census, "governmental entity" means any political subdivision of the state of Tennessee including, but not limited to, any municipality, county, utility district, school district, nonprofit volunteer fire department receiving funds appropriated by a county legislative body or a legislative body of a municipality, human resource agency, community action agency or nonprofit corporation that

e-13

T. C. A. § 29-20-107

West's Tennessee Code Annotated Currentness

Title 29. Remedies and Special Proceedings

Chapter 20. Governmental Tort Liability

Part 1. General Provisions (Refs & Annos)

→§ 29-20-107. Public officers and employees; torts; regional transportation authority

(a) Any person who is not an elected or appointed official or a member of a board, agency or commission shall not be considered an employee of a governmental entity for purposes of this chapter unless the court specifically finds that all of the following elements exist:

(1) The governmental entity itself selected and engaged the person in question to perform services;

(2) The governmental entity itself is liable for the payment of compensation for the performance of such services and the person receives all of such person's compensation directly from the payroll department of the governmental entity in question;

(3) The person receives the same benefits as all other employees of the governmental entity in question including retirement benefits and the eligibility to participate in insurance programs;

(4) The person acts under the control and direction of the governmental entity not only as to the result to be accomplished but as to the means and details by which the result is accomplished; and

(5) The person is entitled to the same job protection system and rules, such as civil service or grievance procedures, as are other persons employed by the governmental entity in question.

(b) A governmental entity's reservation of the right to approve employment or terminate employment by any contract, agreement or other means or such entity's ability to control or direct a person not otherwise in the regular employ of such entity shall not operate to make a person an employee of such entity for the purpose of the immunity granted by this chapter unless such person otherwise qualifies as an employee according to this section.

(c) No governmental entity may extend the immunity granted by this

C14

T. C. A. § 29-20-201

West's Tennessee Code Annotated Currentness

Title 29. Remedies and Special Proceedings

Chapter 20. Governmental Tort Liability

Part 2. Removal of Immunity

→§ 29-20-201. Sovereign immunity; legislative findings exceptions; flooded road warning sign or barricade

(a) Except as may be otherwise provided in this chapter, all governmental entities shall be immune from suit for any injury which may result from the activities of such governmental entities wherein such governmental entities are engaged in the exercise and discharge of any of their functions, governmental or proprietary.

(b)(1) The general assembly finds and declares that the services of governmental entity boards, commissions, authorities and other governing agencies are critical to the efficient conduct and management of the public affairs of the citizens of this state. Complete and absolute immunity is required for the free exercise and discharge of the duties of such boards, commissions, authorities and other governing agencies. Members of boards, commissions, authorities, and other governing agencies must be permitted to operate without concern for the possibility of litigation arising from the faithful discharge of their duties.

(2) All members of boards, commissions, agencies, authorities, and other governing bodies of any governmental entity, created by public or private act, whether compensated or not, shall be immune from suit arising from the conduct of the affairs of such board, commission, agency, authority, or other governing body. Such immunity from suit shall be removed when such conduct amounts to willful, wanton, or gross negligence.

(c) When immunity is removed by this chapter any claim for damages must be brought in strict compliance with the terms of this chapter.

(d) Notwithstanding this chapter or any other law to the contrary, a governmental entity that places and properly maintains a clearly visible and adequate flood warning sign or barricade at a flooded road area shall be immune from suit for any injury resulting from a violation of § 55-10-205

(c). The immunity from suit shall be removed when the governmental entity's conduct amounts to willful, wanton, or gross negligence. It shall be deemed gross negligence if an authorized government employee signaled

015

T. C. A. § 29-20-307

West's Tennessee Code Annotated Currentness

Title 29. Remedies and Special Proceedings

^ Chapter 20. Governmental Tort Liability

^ Part 3. Claims Procedure

→§ 29-20-307. Exclusive jurisdiction; nonjury trial

The circuit courts shall have exclusive original jurisdiction over any action brought under this chapter and shall hear and decide such suits without the intervention of a jury, except as otherwise provided in § 29-20-313(b); provided, that in counties having a population of more than eight hundred fifty thousand (850,000), according to the 2000 federal census or any subsequent federal census, the general sessions court shall have concurrent original jurisdiction with such circuit court over any action brought under this chapter; and provided further, that the jurisdiction conferred upon the general sessions court by this section shall not extend beyond the jurisdictional dollar limit provided in § 16-15-501(d) for such general sessions courts in civil cases generally.

CREDIT(S)

T. C. A. § 29-20-308

West's Tennessee Code Annotated Currentness

Title 29. Remedies and Special Proceedings

Chapter 20. Governmental Tort Liability

Part 3. Claims Procedure

→§ 29-20-308. Venue

(a) Suits filed under this chapter may be brought in the county in which such governmental entity is located or in the county in which the incident occurred from which the cause of action arises.

(b) A governmental entity operating in more than one (1) county shall be deemed to be located in the county where its principal office is found.

CREDIT(S)

C17

T. C. A. § 29-20-313

West's Tennessee Code Annotated Currentness

Title 29. Remedies and Special Proceedings

Chapter 20. Governmental Tort Liability

Part 3. Claims Procedure

→§ 29-20-313. Multiple defendants

(a) When one (1) or more defendants to a lawsuit claim to be employees of a governmental entity as defined by § 29-20-107 and are therefore entitled to the governmental immunity granted by this chapter, it shall be a question of fact whether the defendant or defendants claiming immunity are such employees. If the trier of fact determines that the defendant claiming immunity is not a governmental entity employee, the lawsuit as to that defendant shall proceed like any other civil case. If the trier of fact determines that the defendant claiming immunity is a governmental entity employee, the lawsuit as to that defendant shall proceed in accordance with this chapter.

(b) When suit is brought in circuit court in a case in which there are multiple defendants, one (1) or more of which are a governmental entity or entities or governmental entity employee or employees whose liability or lack thereof is to be determined based upon this chapter and one (1) or more of which are not such governmental entity or entities or governmental entity employee or employees, the case shall be heard and decided by a jury upon the demand of any party. Nothing in this section shall be construed to abridge the right of any party to a trial by jury otherwise granted by the state or federal constitution or any statute.

CREDIT(S)

015

WESTLAW

§ 40-1-108. Original jurisdiction; circuit and criminal courts

West's Tennessee Code Annotated Title 40. Criminal Procedure (Approx. 2 pages)

West's Tennessee Code Annotated

Title 40. Criminal Procedure

Chapter 1. Jurisdiction and Venue

T. C. A. § 40-1-108

§ 40-1-108. Original jurisdiction; circuit and criminal courts

Currentness

The circuit and criminal courts have original jurisdiction of all criminal matters not exclusively conferred by law on some other tribunal.

Credits

Formerly 1858 Code, § 4967; Shannon's Code, § 6928; 1932 Code, § 11467; § 40-116.

Notes of Decisions containing your search terms (0)

View all 4

T. C. A. § 40-1-108, TN ST § 40-1-108

Current through end of the 2017 First Regular Session of the 110th Tennessee General Assembly.

End of

Document

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APPENDIX – D

[1- 10]

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Slip Copy, 2010 WL 2812621 (Tenn.Crim.App.)

Only the Westlaw citation is currently available.

SEE RULE 19 OF THE RULES OF THE COURT OF CRIMINAL APPEALS RELATING TO PUBLICATION OF OPINIONS AND CITATION OF UNPUBLISHED OPINIONS.

Court of Criminal Appeals of Tennessee,
at Knoxville.
STATE of Tennessee'

v.

Daniel Henderson **JONES**.

No. E2009-00182-CCA-R3-CD.

Assigned on Briefs Feb. 23, 2010.

July 16, 2010.

Application for Permission to Appeal

Denied by Supreme Court

Nov. 12, 2010.

Appeal from the Criminal Court for Sullivan County, Nos. S52,468; S53, 126; and S53,127; Robert H. Montgomery, Jr., Judge.

Daniel Henderson Jones, Mountain City, TN, pro se.

Robert E. Cooper, Attorney General and Reporter; Rachel West Harmon, Assistant Attorney General; H. Greeley Wells, Jr., District Attorney General; and Kent Chitwood, Assistant District Attorney General, for the appellee, State of Tennessee.

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and NORMA McGEE OGLE, J., joined.

OPINION

D. KELLY THOMAS, JR., J.

*1 The Defendant, Daniel Henderson Jones, appeals as of right from the Sullivan County Criminal Court's denial of his motions to withdraw guilty pleas and for reduction of sentences following his negotiated guilty pleas in case number S52,468 to one count of aggravated assault, a Class C felony; in case number S53,126 to one count of possession of .5 grams of cocaine for sale, a Class B felony; one count of possession of drug paraphernalia, a Class A misdemeanor; one count of maintaining a dwelling where drugs are sold or used, a Class D felony; and in case number S53,127 to possession of cocaine for sale, a Class C felony. He received a total effective sentence of twenty years as a Range I, standard offender. On appeal, the Defendant argues that the trial court erred in denying his motions and that his sentences were imposed absent the trial court making required findings relative to enhancement and mitigating factors. Following our review, we affirm the judgments of the trial court.

The record reflects that the Sullivan County grand jury charged the Defendant by presentment or indictment in three separate cases as follows:

Case Number S52,468	Aggravated assault <i>Dismissed!</i>
Case Number S53,126 (count one)	Possession of .5 grams or more of Cocaine for Sale or Delivery
Case Number S53,126 (count two)	Possession of Drug Paraphernalia
Case Number S53,126 (count four)	Maintaining a Dwelling where Drugs are Used or Sold
Case Number S53,127	Possession of .5 grams of Cocaine for Sale or Delivery

On October 13, 2008, the Defendant entered guilty pleas to all counts as charged in the instruments, except he entered a guilty plea to aggravated assault in exchange for a dismissal of the aggravated rape charge in case number S52,468. The trial court entered judgments reflecting the following agreed sentences:

Case Number	Aggravated Assault	4 years
S52,468		
Case Number	Possession of .5 grams of Cocaine for Sale	12 years
S53,126		
	Possession of Drug Paraphernalia	Eleven months and twenty-nine days
	Maintaining a Dwelling Where Drugs are Sold or Used	2 years
Case Number	Possession of Cocaine for Sale	4 years
S53,127		

Also pursuant to the plea agreement, the sentences in case number S53,126 were ordered to be served concurrently with one another but consecutively to the other cases, which were also ordered to be served consecutively, resulting in a total effective sentence of twenty years.

On December 10, 2008, the Defendant filed a pro se motion for modification or reduction of his sentences, see Tenn. R.Crim. P. 35, alleging that the sentences were imposed without appropriate findings concerning mitigating and enhancement factors and that the sentences should not have been imposed consecutively. On December 22, 2008, the Defendant filed a pro se motion to withdraw his guilty pleas in case numbers S52,468; S53,124; S53,126; and S53, 127. See Tenn. R.Crim. P. 32(f). On January 8, 2009, the trial court summarily dismissed the motions as they related to case number S53,124 because that case involved a conviction following a jury trial in which the motion for new trial was still pending. On January 29, 2009, the trial court denied the motion to withdraw guilty pleas related to the remaining cases because it was untimely filed. However, the trial court granted the Defendant a hearing on his motion for reduction of sentence related to case numbers S52,468; S53,126; and S53,127.

*2 Following two separate appointments of counsel, the Defendant ultimately waived representation and elected to proceed pro se at the Rule 35 motion hearing. At the hearing held on August 14, 2009, the Defendant presented no proof but relied upon his pro se pleadings. On November 12, 2009, the trial court denied the Rule 35 motion by written order finding that the Defendant had failed to present any proof upon which to base a modification or reduction of sentence. This timely appeal followed.

On appeal, the Defendant argues that the trial court erred in denying his motions for withdrawal of his guilty pleas and reduction of sentence. The crux of his argument is that the trial court failed to make appropriate findings to justify the imposition of sentences beyond the statutory minimum and that he should not have received consecutive sentences from his guilty pleas. The State responds that the Defendant cannot challenge agreed to sentences arising from a knowing and voluntary guilty plea through a Rule 35 motion and that the motion to withdraw his guilty pleas was untimely filed; therefore, the trial court correctly denied both motions. Following our review, we agree with the State and affirm the orders of the trial court.

Analysis

As an initial matter, the pro se Defendant does not make any argument regarding the timeliness of the filing of his motion to withdraw his guilty pleas. Instead, he makes various vague allegations in his brief that he understood he was to receive a mitigated sentence and that the trial court failed to undergo the proper colloquy during his guilty plea hearing as a basis for his contention that he should be allowed to withdraw his pleas. We note that the transcript of the guilty plea hearing is absent from the record. Furthermore, the guilty plea acceptance form belies the Defendant's claim that he was to receive any "mitigated" sentence because it clearly outlines the length of the agreed sentences as well as the range of punishment as ultimately reflected in the judgments. Nevertheless, a motion for withdrawal of a guilty plea must be filed before a judgment becomes final. Tenn. R.Crim. P. 32(f)(2).

Thus, the Defendant should have filed his motion no later than November 17, 2009, in order to afford jurisdiction for the trial court's consideration of the motion.^{FN1} Therefore, the trial court properly denied the motion to withdraw because it was untimely.

^{FN1}. We note that the record reflects some confusion in the entry dates of the judgments. Case numbers S52,468; S53,127; and counts one and four of S53,126 all reflect entry dates of October 17, 2008. However, the judgment for count two of case number S53,126 was not entered until January 12, 2009. In consideration of this discrepancy in filing dates, the motion to withdraw the guilty plea in count two, the only misdemeanor case, was not untimely. However, the sentence in this count was ordered to be served concurrently with the felony sentences. Accordingly, even assuming the trial court had granted relief concerning this count, the relief would have had no effect upon the actual sentence to be served.

Concerning the motion for reduction or modification of sentences, Rule 35(a) of the Tennessee Rules of Criminal Procedure provides that a defendant may petition the trial court for a reduction of sentence within one hundred and twenty days of the entry of judgment or the revocation of probation. Rule 35 allows for the modification of a sentence when appropriate in the interest of justice. State v. Hodges, 815 S.W.2d 151, 154 (Tenn.1991). When a defendant seeks to modify a sentence entered pursuant to a guilty plea, a motion should be granted when post-sentencing developments arise that should be addressed in the interest of justice. State v. McDonald, 893 S.W.2d 945, 947 (Tenn.Crim.App.1994). Alternatively, a motion for reduction of sentence may be dismissed summarily without a hearing if no developments have arisen requiring redress by the sentencing court. Tenn. R.Crim. P. 35(c). Our standard of review on appeal is whether the trial court abused its discretion in denying a defendant's motion for reduction of sentence. State v. Irick, 861 S.W.2d 375, 376 (Tenn.Crim.App.1993), *perm. app. denied* (Tenn.1995).

*3 The Defendant sought reduction of his sentences based upon his allegation that the trial court did not make appropriate findings to impose sentences beyond the statutory minimum and that the trial court did not have the authority to order consecutive sentences. However, the sentences were imposed pursuant to a plea agreement, and, based upon the record before this court, all elements of the sentencing decision were agreed to by the parties and not open to consideration by the trial court. As previously stated, a motion to reduce sentence should be granted when, in the interest of justice, post-sentencing facts arise warranting a reconsideration of a defendant's sentence. McDonald, 893 S.W.2d at 947. It is apparent from this record that no new developments have occurred in the Defendant's case. For these reasons, we conclude that the trial court did not abuse its discretion in denying the Defendant's motion for reduction of sentence. Accordingly, the orders of the trial court denying the Defendant's motions to withdraw his guilty pleas and to reduce his sentences are affirmed.

CONCLUSION

In consideration of the foregoing and the record as a whole, the judgments of the trial court are affirmed.

Tenn.Crim.App.,2010:

State v. Jones

Slip Copy, 2010 WL 2812621 (Tenn.Crim.App.)

END OF DOCUMENT

3/07/0

GENERAL SESSIONS COURT OF SULLIVAN COUNTY, TENNESSEE

A F 4

State of Tennessee vs. C. Taylor
 Title Control # 1-26-06 9:30 AM II
 Attorney for Def: 1-26-06 9:30 AM II
 Court Date 1-26-06 9:30 AM II
 Date, Def. to 1-26-06 9:30 AM II
 Date, Def. to 4-20-06 1:00 AM II
 Date, Def. to June 10 1:00 AM II
 State, Def. to Aug 10 9:30 AM II
Oct 26 9:30 AM II
Jan 25, 07 1:00

Daniel Henderson Jones
 Sullivan County Case # 771079
 Address 1031 Lincoln Street Apt. 32
Kingsport, TN
 Phone None DL# 090217133 TN
 DOB 03-05-53 SS#
 Sex M Race B Wt 209 Hair Blk Eyes Bm
 Work None

AFFIDAVIT OF COMPLAINT

I, the affiant named below, after being sworn, state under oath that on or about August 29, 2005 in Sullivan County, Tennessee, Daniel Henderson Jones

committed the offense(s) of violation(s) of
TCA 39-17-417 Possession Over .5 Grams Cocaine for Resale

and further state under oath that the essential facts constituting the offense(s), the sources of my information and the reasons why this information is believable and reliable are as follows:

On 08-29-05 members of the KPD Vice Unit were in the Riverview community when a B/M flagged our vehicle down. I approached identified myself as the police. I asked the subject for and received consent to search his person. I located a Tic Tac box containing rocks, believed to be crack cocaine in his right lower cargo pants pocket. The subject was arrested and taken to the city 1) Possession Over .5 Grams Cocaine for Resale as the weight of the rocks is believed to exceed .5 Grams. The rocks were found positive for Cocaine. The above occurred in Kingsport/Sullivan County, TN.

The subject and
 a fair tan colored
 d charged with
 led and showed

PRELIMINARY HEARING WAS
 HELD BY JUDGE SMOCK GRASS
 AND APPEARED WITH EVIDENCE
 HEARD, VIEWED AND DISMISSED

Affiant's Signature:

(Printed):

Address (Printed):

Number:

Det. Sean E. Chambers/ KPD Vice Div.

200 Shelby ST. Kingsport, TN

423-229-9434

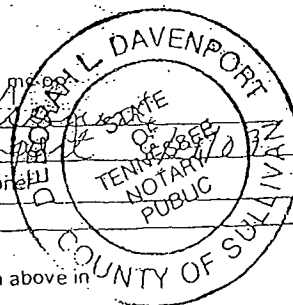
Sworn to and subscribed before me on

this day of

at

Judge/Clerk/Judicial Commissioner

2005



PROBABLE CAUSE DETERMINATION

Based on the affidavit of complaint, I find there is probable cause to believe that on the date set forth above in Sullivan County, Tennessee the defendant committed the offense(s) of violation(s) of TCA

39-17-417 Possession Over .5 Grams Cocaine for Resale

I defendant given citation or arrested without warrant () arrest warrant shall issue () criminal summons shall issue

8-3-05

Date

Judge/Clerk/Judicial Commissioner

22

IN THE CRIMINAL COURT FOR THE
SECOND JUDICIAL DISTRICT OF THE STATE OF TENNESSEE
SULLIVAN COUNTY

STATE OF TENNESSEE

V.

Daniel H. Jones
Defendant

CASE NO.

553,126; 553,127
552,468

Place of Birth

Norton Va

DOB: 3/5/53

Race B

Sex M

Last Four Digits of SS#

Registered Voter:

Yes

No

If yes,

County

REQUEST FOR ACCEPTANCE OF PLEA OF GUILTY
WAIVER OF RIGHTS

1. My full and correct name is Daniel Henderson Jones and I am represented by GREGORY W. FRANCISCO, attorney, who was (hired) (appointed by the Court) to represent me.
2. I have received a copy of the charges against me and have discussed them with my attorney. I understand the nature of the charge(s) against me and defenses that could be raised on my behalf.
3. I understand the minimum and maximum penalties provided by law for each of the charge(s) to be:

Minimum & Maximum Sentence/Minimum & Maximum Fine

Minimum & Maximum Sentence/Minimum & Maximum Fine

Count 1 8 + 30 / 2000 + 100,000
Count 2 0 + 11/29 / 150 + 2,500
Count 3
Count 4 2 + 12 / 0 + 5,000
Count 5
Count 6 8 + 30 / 2,000 + 100,000
Count 7
Count 8
Count 9 15 + 60 / 0 +
Count 10 3 + 15 / 0 + 10,000

Count 11
Count 12
Count 13
Count 14
Count 15
Count 16
Count 17
Count 18
Count 19
Count 20

4. My attorney has explained the difference between concurrent and consecutive sentences, and I understand that the sentences imposed on me in this case can be concurrent or consecutive.
5. I understand that my sentence upon a plea of guilty, if accepted by the Court, will be as follows:

I plead guilty to (offense)

sentence range RED fine jail DOC CC

Prob.
S/U**

Count 1 Poss. of 15 gram cocaine w/ intent to sell

12 yrs 1 30% 2000

Count 2 Poss of paraphernalia

11/29 175% 150

Count 3

Count 4 Maintaining a Dwelling where Controlled substances are sold

2 yrs 1 30% 100

Count 5

Count 6 Poss. of cocaine for sale or delivery

4 yrs 1 30% 2000

Count 7

Count 8

Count 9 Nolle

Count 10 Aggravated Assault

4 yrs 1 30% 300

(Use back of form for additional counts.)

APPENDIX

(Fill in each, if appropriate.)

23

2/27/13
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CASE NO. 553126, 553127, 552468

ORDER ACCEPTING PLEA OF GUILTY

After reviewing the defendant's Waiver of Rights set out above, the Court did then interrogate the defendant personally as to all matters previously set out and the Court did interrogate the defendant as to the intelligent and voluntary waiver of all rights previously set out.

Based upon this personal interrogation the Court concludes that the defendant understands the nature of the charge(s) against him/her and the rights which he/she is giving up by this guilty plea.

The Court concludes that there is a factual basis for the defendant's plea of guilty, and therefore the defendant's plea is being entered freely, knowledgeably, and voluntarily after freely, knowledgeably and voluntarily waiving the above set out rights.

The Court accepts the defendant's plea of guilty.

Defendant is rendered infamous and disqualified from holding public office, voting, serving on a Jury and possessing a firearm.

☒ Yes ☐ No

In Count(s) N/A Defendant is prohibited from driving on the public ways of Tennessee for _____ years.

This the _____ day of _____, 20____.

JUDGE

APPROVED:

[Signature]
District Attorney General

[Signature]
Defendant
[Signature]
Attorney for Defendant

PROBATION / ALTERNATIVE SENTENCE

This, the _____ day of _____, 20____.

SET FOR _____

Judge

Filed _____, by _____, Clerk

The court has advised me that I have the right to be represented by
An attorney and if indigent to have an attorney appointed to represent me.
I WAIVE THE RIGHT TO AN ATTORNEY AND WISH TO
PROCEED IN THIS CASE WITHOUT AN ATTORNEY.

I find the defendant understands and freely and
the right to an attorney.

Date _____ Defendant _____ Date _____ Judge _____
() I waive my right to a preliminary hearing and agree for my case to be bound over to the Sullivan County Grand Jury.
() I waive my right to be tried only after being indicted by the Grand Jury and waive my right to a trial by jury and plead NOT GUILTY to violation(s) of
TCA _____

Attorney for Defendant _____ Date _____ Defendant _____

I plead GUILTY to violation(s) TCA _____. I have been advised by the Court of the following rights and I understand I waive each by
pleading guilty: (1) the right to plead guilty (2) the right to a jury trial (3) the right to confront and cross-examine the witnesses against me (4)
the right to remain silent and not be compelled to incriminate myself (5) the right to indictment or presentment by the Grand Jury (6) the right to
subpoena witnesses to testify for me (7) the right to have any fine greater than \$50.00 be set by a jury and (8) the right to appeal if convicted after
trial. I FULLY UNDERSTAND AND WAIVE EACH AND EVERY ONE OF THESE RIGHTS FREELY AND VOLUNTARILY and understand that I give up
the right to remain silent and must answer questions asked by the judge or district attorney.

I have been fully advised by the Court and I understand: (9) the nature of the charge(s) against me (10) the minimum and maximum punishments for the
charge(s) (11) that prior convictions and other factors may be considered in determining my sentence (12) that after my plea there will be no evidence presented and no
trial but only sentencing (13) that it is perjury to falsely answer questions while under oath (14) that there must be facts to support the plea and (15) that THIS
CONVICTION MAY BE USED IN THE FUTURE TO INCREASE THE PUNISHMENT FOR SUBSEQUENT OFFENSES.

I am guilty of the charge(s) because the facts which I know to exist equal elements of the charge(s) as those elements have been explained to me by the court
and there is a factual basis for my plea. I am pleading guilty freely and voluntarily and not as the result of force or threats or of promises apart from a plea agreement, in
which my willingness to plead guilty results from discussions between the District Attorney's Office and me or my attorney. I ask the Court to accept my plea of guilty.

Attorney for Defendant _____ Date _____ Defendant _____
I have questioned the defendant personally about the matters and rights itemized above and about the defendant's waiver of those rights. I have concluded
that the defendant understands the nature of the charge(s) and the rights which are given up by pleading guilty. I have concluded that there is a factual basis for
defendant's plea of guilty and that the plea is being entered freely, knowledgeably and voluntarily after freely, knowledgeably and voluntarily waiving the rights set out
above and the plea of guilty is therefore accepted.

Date _____ Judge _____

GENERAL SESSIONS COURT OF SULLIVAN COUNTY TENNESSEE

State of Tennessee vs. _____
State Control # _____ Sullivan Co. Case # 553-127

JUDGEMENT

Dismissed - costs taxed to the State Defendant Indicted Since Last Settle
() State's motion to not prosecute () after preliminary hearing () affiant did not appear () Defendant waived extradition
Dismissed on condition Defendant pay costs _____
Defendant found NOT GUILTY - costs taxed to the State _____
Found GUILTY of violation of TCA _____
fined \$ _____, taxed with costs and sentenced to serve _____ months _____ days in the Sullivan Co. Jail (Class _____ Misd.)
Found GUILTY of violation of TCA _____
fined \$ _____, taxed with costs and sentenced to serve _____ months _____ days in the Sullivan Co. Jail (Class _____ Misd.)
Found GUILTY of violation of TCA _____
fined \$ _____, taxed with costs and sentenced to serve _____ months _____ days in the Sullivan Co. Jail (Class _____ Misd.)
Found GUILTY of violation of TCA _____
fined \$ _____, taxed with costs and sentenced to serve _____ months _____ days in the Sullivan Co. Jail (Class _____ Misd.)
() Defendant indigent - fine suspended () cannot pay fine and costs today - due _____
Jail sentence suspended except _____ on condition of good behavior, payment of fines and costs and restitution of
\$ _____ for _____ and () no contact with _____ () active probation.
() not drive in Tennessee for _____ year(s) and completion of () DUI school () alcohol/drug evaluation and counseling
() domestic abuse counseling () _____ hours of community service work _____
() Appealed () Defendant bound over to Sullivan County Grand Jury after () preliminary hearing () waiving preliminary hearing and
() bail set at \$ _____ () Defendant shall continue on current bond of \$ _____
() Release eligibility date is _____ % of the term of imprisonment () See separate sentencing order

1-25-07 Date _____ Judge Mark J. [Signature] **D4**

MINUTES, the 16th of October, 2008
IN THE CRIMINAL CIRCUIT COURT OF SULLIVAN COUNTY, TENNESSEE

Case # 52468
County # 1
Judicial Division: 1
Alins: _____
SSN: _____
State Control # _____
County Offender ID # _____
Defendant: DANIEL HENDERSON JONES
Birth: 3/5/1953
Sex: Male
Race: Black
TDOC # _____
State ID # _____
Filing Date: 1/24/2007

Attorney for the State: TERESA A. NELSON
Counsel for Defendant: GREG FRANCISCO
☐ Retained ☒ Appointed ☐ Public Defender
☐ Counsel Waived ☐ Pro Se

JUDGMENT

☒ Original ☐ Amended ☐ Corrected

the District Attorney General for the State and the defendant with counsel of record for entry of judgment.
13th day of October, 2008, the defendant:
Guilty ☒ Dismissed/Nolle Prosequi
Contender ☐ Defendant
Plea Pursuant to 40-35-313
nd: ☐ Guilty ☐ Not Guilty
ry Verdict: ☐ Not Guilty by Reason of Insanity
ch Trial
Indictment: Class (circle one) 1st A B C D
Offense: AGGRAVATED RAPE
Amended Charge: _____
Offense Date: 5/1/2006
County: Sullivan
Conviction Offense: DISMISSED
Is this conviction offense methamphetamine related? ☐ Yes ☒ No
TCA #: _____ Sentence Imposed Date: _____
Conviction: Class (circle one) 1st A B C D E ☐ Felony ☐ Misdemeanor

Considering the evidence, the entire record, & all factors in T.C.A. Title 40 Chapter 35, all of which are incorporated by reference herein, the Court's findings & rulings are:
Sentence Reform Act of 1989
Status (Check One)
Mitigated 20% ☐ Mitigated 30% ☐ Standard 30% ☐ Multiple 35% ☐ Persistent 45% ☐ Career 60% ☐ Violent 100% ☐
Multiple Rapist 100% ☐ Child Rapist 100% ☐ Repeat Violent 100% ☐ Child Predator 100% ☐
1st Degree Murder ☐ Drug Free Zone ☐ Gang Related ☐
Concurrent with: _____
Consecutive to: _____
Pretrial Jail Credit Period(s):
From _____ to _____
From _____ to _____
From _____ to _____
From _____ to _____

Need To: ☐ TDOC ☐ County Jail ☐ Workhouse ☐ Life ☐ Life w/out Parole ☐ Death
Sentence Length: _____ Years _____ Months _____ Days _____ Hours _____ Weekends
Mandatory Minimum Sentence Length: 39-17-417, 39-13-513, 39-13-514 in Drug Free Zone or 55-10-401 DUI 4th Offense
or 39-17-1324 Possession/Employment of Firearm
Period of incarceration to be served prior to release on probation: _____ Months _____ Days _____ Hours _____ Weekends
Minimum service prior to eligibility for work release, furlough, trusty status and rehabilitative programs: _____ % (Misdemeanor Only)
Alternative Sentence: ☐ Probation ☐ Diversion ☐ Drug Court ☐ Community-Based Alternative - Specify _____
Effective: _____

Ordered Fees and Fines:
Criminal Injuries Compensation Fund
Sex Offender Tax
Court Costs
Fine Assessed: _____
Other: _____
Cost to be Paid by: ☐ Defendant ☒ State
Restitution: Victim Name _____ Address _____
Total Amount \$ _____ Per Month \$ _____
Unpaid Community Service: _____ Hours _____ Days _____ Weeks _____

Special Conditions:
☐ The Defendant having been found guilty is rendered infamous and ordered to provide a biological specimen for the purpose of _____
☐ Pursuant to 39-13-521 the defendant is ordered to provide a biological specimen for the purpose of HIV testing.
☐ Pursuant to 39-13-524 the defendant is sentenced to community supervision for life following sentence expiration.

DS

Robert H. Montgomery Jr.
Judge's Name
Judge's Signature
Date of Entry in Judgment
Defendant's Attorney/Signature (optional)

IN THE CRIMINAL COURT FOR SULLIVAN COUNTY
AT BLOUNTVILLE, TENNESSEE

DANIEL H. JONES

v.

Case No. S52,468

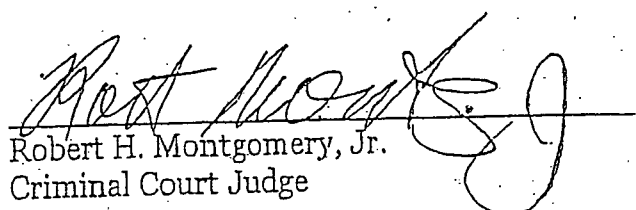
STATE OF TENNESSEE

ORDER

Upon review of the Application for Expunction of Record filed on March 3, 2010
in the above referenced case,

IT IS HEREBY ORDERED all ^{public} records relating to the offense of aggravated rape,
which was dismissed October 13, 2008, should be expunged pursuant to T.C.A. Section
40-32-101. Costs are taxed to the State.

ENTER this the 9 day of March, 2010.


Robert H. Montgomery, Jr.
Criminal Court Judge

CERTIFICATE

I hereby certify a true and exact copy of the foregoing Order has been sent via
U.S. mail to Daniel H. Jones, #00443638, N.E.C.X., P.O. Box 5000, Mountain City, TN
37683-5000, and to the District Attorney General by placing said copy in the mail drop
box located in the Clerk's Office.


Clerk

TOMMY R. HENHS
CLERK
SULLIVAN COUNTY, TN

2010 MAR -9 A 11:37

FILED

09
G-1

TABLE OF SENTENCES AND RELEASE ELIGIBILITY DATES

FELONY CLASS	MITIGATED (0 priors)	STANDARD RANGE I (0 - 1 prior)	MULTIPLE RANGE II (2 - 4 priors)	PERSISTENT RANGE III (5+ priors)	CAREER
A 15-60 years RED % RED years	13.5 years (20%) (2.7 years)	15-25 years (30%) (4.5 - 7.5 years)	25-40 years (35%) (8.8 - 14 years)	40-60 years (45%) (18 - 27 years)	60 years (60%) (36 years)
B 8-30 years RED % RED years	7.2 years (20%) (1.4 years)	8 - 12 years (30%) (2.4 - 3.6 years)	12 - 20 years (35%) (4.2 - 7 years)	20 - 30 years (45%) (9 - 13.5 years)	30 years (60%) (18 years)
C 15-60 years RED % RED years	2.7 years (20%) (0.5 years)	3 - 6 years (30%) (0.9 - 1.8 years)	6 - 10 years (35%) (2.1 - 3.5 years)	10 - 15 years (45%) (4.5 - 6.8 years)	15 years (60%) (9 years)
D 15-60 years RED % RED years	1.8 years (20%) (0.4 years)	2 - 4 years (30%) (0.6 - 1.2 years)	4 - 8 years (35%) (1.4 - 2.8 years)	8 - 12 years (45%) (3.6 - 5.4 years)	12 years (60%) (7.2 years)
E 15-60 years RED % RED years	0.9 years (20%) (0.2 years)	1 - 2 years (30%) (0.3 - 0.6 years)	2 - 4 years (35%) (0.7 - 1.4 years)	4 - 6 years (45%) (1.8 - 2.7 years)	6 years (60%) (3.6 years)

NOTE: First Degree Murder excluded from chart. Sentencing solely according to First Degree Murder statute.
 Rape of a Child, Range I sentence is automatically 25 years at 100% (no sentence reduction credits), effective 0 July 2007.
 RED = Release Eligibility Date. Presumptive sentence = minimum in range (except Class A - middle of range)

TABLE OF MAXIMUM FINES

FELONY	A: \$50,000	B: \$25,000	C: \$10,000	D: \$5,000	E: \$3,000
MISDEMEANOR	A: \$2,500	B: \$500	C: \$50	Drug fines special (TCA §39-17-417)	

RANGE CALCULATION

Especially Mitigated	Range I- Standard	Range II- Multiple	Range III- Persistent	Career
No prior felonies. Court must find mitigating factors but no enhancement factors. Reduce Range I sentence by 10%, reduce RED to 20%, or both.	0-1 prior felony, depending upon conviction class.	2-4 prior felonies in same class, higher class, or next 2 lower classes. One prior, if conviction class is A or B.	5 or more priors in same class, higher class, or next 2 lower classes. OR Combination of 3 prior A and B felonies if current conviction is Class A or B.	If current offense is B or C, any combination of 6 prior A, B and C felonies. OR 5 prior A felonies. OR Combination of 4 prior A and B felonies. OR 6 prior felonies of any class, if current offense is D or E felony.

***Single course of conduct:** Also known as "crime spree law". Felonies committed as part of single course of conduct, during single 24-hour period, adjudicated in single proceeding, and involving **NO THREATENED OR ACTUAL VIOLENCE** against any **PERSON(S)** are considered to be a single offense for sentencing purposes.

DTU

APPENDIX – E

[1- 8]

.. Table of Contents.

Petitioner's initial Appendices

"E"	Document
<u>CONSTITUTIONAL PROVISION:</u>	
U.S. Amendment-V;	E-1
U.S. Amendment-VI	E-2
U.S. Amendment-VIII.....	E-3
U.S. Amendment-XIV.....	E-4
<u>FEDERAL STATUTES AND RULES INVOLVED:</u>	
42 USC §1983.....	E-5
28 USC §1915.....	E-6
28 USC §1343(a) (3).....	E-7
F.R.Civ..P. 62(g) (1).....	E-8
18 USC § 242.....	E-9

Currentness

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

E1

WESTLAW

Amendment VI. Jury trials for crimes, and procedural rights

USCA CONST Amend. VI-Jury Trials United States Code Annotated Constitution of the United States (Approx. 2 pages)

United States Code Annotated

Constitution of the United States

Annotated

Amendment VI. Jury Trial for Crimes, and Procedural Rights (Refs & Annos)

U.S.C.A. Const. Amend. VI-Jury Trials

Amendment VI. Jury trials for crimes, and procedural rights

Currentness

<Notes of Decisions for this amendment are displayed in three separate documents. Notes of Decisions for subdivisions I through XX are contained in this document. For Notes of Decisions for subdivisions XXI through XXIX, see the second document for Amend. VI. For Notes of Decisions for subdivisions XXX through XXXIII, see the third document for Amend. VI.>

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Notes of Decisions (5419)

U.S.C.A. Const. Amend. VI-Jury Trials, USCA CONST Amend. VI-Jury Trials
Current through P.L. 116-5. Title 26 current through 116-7.

End of

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Document

E2

WESTLAW

Amendment VIII. Excessive Bail, Fines, Punishments

USCA CONST Amend. VIII United States Code Annotated Constitution of the United States (Approx. 2 pages)

United States Code Annotated

Constitution of the United States

Annotated

Amendment VIII. Excessive Bail, Fines, Punishments

U.S.C.A. Const. Amend. VIII

Amendment VIII. Excessive Bail, Fines, Punishments

Currentness

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

HISTORICAL NOTES**Proposal and Ratification**

The first ten amendments to the Constitution were proposed to the Legislatures of the several States by the First Congress on September 25, 1789, and were ratified on December 15, 1791. For the States which ratified these amendments, and the dates of ratification, see Historical notes under Amendment 1.

Notes of Decisions (6495)

U.S.C.A. Const. Amend. VIII, USCA CONST Amend. VIII
Current through P.L. 116-5. Title 26 current through 116-7.

End of

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Document

E3

WESTLAW

AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPR...
USCA CONST Amend. XIV-Full Text United States Code Annotated Constitution of the United States (Approx. 2 pages)

United States Code Annotated
Constitution of the United States
Annotated

Amendment XIV. Citizenship; Privileges and Immunities; Due Process; Equal
Protection; Apportionment of Representation; Disqualification of Officers; Public
Debt; Enforcement

U.S.C.A. Const. Amend. XIV-Full Text

AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES;
DUE PROCESS; EQUAL PROTECTION; APPOINTMENT OF
REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC
DEBT; ENFORCEMENT

Currentness

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

<Section 1 of this amendment is further displayed in separate documents according to subject matter.>

<see USCA Const Amend. XIV, § 1-Citizens>

<see USCA Const Amend. XIV, § 1-Privileges>

<see USCA Const Amend. XIV, § 1-Due Proc>

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42 U.S.C.A. § 1983

§ 1983. Civil action for deprivation of rights

Currentness

<Notes of Decisions for 42 USCA § 1983 are displayed in six separate documents. Notes of Decisions for subdivisions I to IX are contained in this document. For additional Notes of Decisions, see 42 § 1983, ante.>

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

CREDIT(S)

(R.S. § 1979; Pub.L. 96-170, § 1, Dec. 29, 1979, 93 Stat. 1284; Pub.L. 104-317, Title III, § 309(c), Oct. 19, 1996, 110 Stat. 3853.)

E5

5

Unconstitutional or Preempted Validity Called into Doubt by Rolland v. Primesource Staffing, L.L.C. 10th Cir.(Colo.) Aug. 07, 2007

Effective: April 26, 1996

28 U.S.C.A. § 1915

§ 1915. Proceedings in forma pauperis

Currentness

(a)(1) Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

(2) A prisoner seeking to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security therefor, in addition to filing the affidavit filed under paragraph (1), shall submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined.

(3) An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

(b)(1) Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of--

(A) the average monthly deposits to the prisoner's account; or

(B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

(2) After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

(3) In no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action or criminal judgment.

(4) In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.

(c) Upon the filing of an affidavit in accordance with subsections (a) and (b) and the prepayment of any partial filing fee as may be required under subsection (b), the court may direct payment by the United States of the expenses of (1) printing the record on appeal in any civil or criminal case, if such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United States magistrate judge in any civil or criminal case, if such transcript is required by the district court, in the case of proceedings conducted under section 636(b) of this title or under section 3401(b) of title 18, United States Code; and (3) printing the record on appeal if such printing is required by the appellate court, in the case of proceedings conducted pursuant to section 636(c) of this title. Such expenses shall be paid when authorized by the Director of the Administrative Office of the United States Courts.

(d) The officers of the court shall issue and serve all process, and perform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases.

(e)(1) The court may request an attorney to represent any person unable to afford counsel.

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that--

(A) the allegation of poverty is untrue; or

(B) the action or appeal--

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief against a defendant who is immune from such relief.

(f)(1) Judgment may be rendered for costs at the conclusion of the suit or action as in other proceedings, but the United States shall not be liable for any of the costs thus incurred. If the United States has paid the cost of a stenographic transcript or printed record for the prevailing party, the same shall be taxed in favor of the United States.

(2)(A) If the judgment against a prisoner includes the payment of costs under this subsection, the prisoner shall be required to pay the full amount of the costs ordered.

(B) The prisoner shall be required to make payments for costs under this subsection in the same manner as is provided for filing fees under subsection (a)(2).

(C) In no event shall the costs collected exceed the amount of the costs ordered by the court.

(g) In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

(h) As used in this section, the term "prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 954; May 24, 1949, c. 139, § 98, 63 Stat. 104; Oct. 31, 1951, c. 655, § 51(b), (c), 65 Stat. 727; Pub.L. 86-320, Sept. 21, 1959, 73 Stat. 590; Pub.L. 96-82, § 6, Oct. 10, 1979, 93 Stat. 645; Pub.L. 101-650, Title III, § 321, Dec. 1, 1990, 104 Stat. 5117; Pub.L. 104-134, Title I, § 101[(a)] [Title VIII, § 804(a), (c) to (e)], Apr. 26, 1996, 110 Stat. 1321-73 to 1321-75; renumbered Title I, Pub.L. 104-140, § 1(a), May 2, 1996, 110 Stat. 1327.)

28 U.S.C.A. § 1343

§ 1343. Civil rights and elective franchise

Currentness

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

- (1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;
- (2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;
- (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;
- (4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

(b) For purposes of this section--

- (1) the District of Columbia shall be considered to be a State; and
- (2) any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 932; Sept. 3, 1954, c. 1263, § 42, 68 Stat. 1241; Pub.L. 85-315, Part III, § 121, Sept. 9, 1957, 71 Stat. 637; Pub.L. 96-170, § 2, Dec. 29, 1979, 93 Stat. 1284.)

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Federal Rules of Civil Procedure Rule 62

Rule 62. Stay of Proceedings to Enforce a Judgment

Currentness

(a) **Automatic Stay.** Except as provided in Rule 62(c) and (d), execution on a judgment and proceedings to enforce it are stayed for 30 days after its entry, unless the court orders otherwise.

(b) **Stay by Bond or Other Security.** At any time after judgment is entered, a party may obtain a stay by providing a bond or other security. The stay takes effect when the court approves the bond or other security and remains in effect for the time specified in the bond or other security.

(c) **Stay of an Injunction, Receivership, or Patent Accounting Order.** Unless the court orders otherwise, the following are not stayed after being entered, even if an appeal is taken:

- (1) an interlocutory or final judgment in an action for an injunction or receivership; or
- (2) a judgment or order that directs an accounting in an action for patent infringement.

(d) **Injunction Pending an Appeal.** While an appeal is pending from an interlocutory order or final judgment that grants, continues, modifies, refuses, dissolves, or refuses to dissolve or modify an injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights. If the judgment appealed from is rendered by a statutory three-judge district court, the order must be made either:

- (1) by that court sitting in open session; or
- (2) by the assent of all its judges, as evidenced by their signatures.

(e) **Stay Without Bond on an Appeal by the United States, Its Officers, or Its Agencies.** The court must not require a bond, obligation, or other security from the appellant when granting a stay on an appeal by the United States, its officers, or its agencies or on an appeal directed by a department of the federal government.

(f) **Stay in Favor of a Judgment Debtor Under State Law.** If a judgment is a lien on the judgment debtor's property under the law of the state where the court is located, the judgment debtor is entitled to the same stay of execution the state court would give.

(g) **Appellate Court's Power Not Limited.** This rule does not limit the power of the appellate court or one of its judges or justices:

- (1) to stay proceedings--or suspend, modify, restore, or grant an injunction--while an appeal is pending; or
- (2) to issue an order to preserve the status quo or the effectiveness of the judgment to be entered.

(h) **Stay with Multiple Claims or Parties.** A court may stay the enforcement of a final judgment entered under Rule 54(b) until it enters a later judgment or judgments, and may prescribe terms necessary to secure the benefit of the stayed judgment for the party in whose favor it was entered.

CREDIT(S)

(Amended December 27, 1946, effective March 19, 1948; December 29, 1948, effective October 20, 1949; April 17, 1961, effective July 19, 1961; March 2, 1987, effective August 1, 1987; April 30, 2007, effective December 1, 2007; March 26, 2009, effective December 1, 2009; April 26, 2018, effective December 1, 2018.)

WESTLAW



§ 242. Deprivation of rights under color of law

18 USCA § 242 | United States Code Annotated | Title 18. Crimes and Criminal Procedure | Effective: October 11, 1996 (Approx. 2 pages)

United States Code Annotated
 Title 18. Crimes and Criminal Procedure (Refs & Annos)
 Part I. Crimes (Refs & Annos)
 Chapter 13. Civil Rights



Proposed Legislation

Effective: October 11, 1996

18 U.S.C.A. § 242

§ 242. Deprivation of rights under color of law

Currentness

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

CREDIT(S)

(June 25, 1948, c. 645, 62 Stat. 696; Pub.L. 90-284, Title I, § 103(b), Apr. 11, 1968, 82 Stat. 75; Pub.L. 100-690, Title VII, § 7019, Nov. 18, 1988, 102 Stat. 4396; Pub.L. 103-322, Title VI, § 60006(b), Title XXXII, §§ 320103(b), 320201(b), Title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 1970, 2109, 2113, 2147; Pub.L. 104-294, Title VI, §§ 604(b)(14) (B), 607(a), Oct. 11, 1996, 110 Stat. 3507, 3511.)

HISTORICAL NOTES

Revision Notes and Legislative Reports

1948 Acts. Based on Title 18, U.S.C., 1940 ed., § 52 (Mar. 4, 1909, c. 321, § 20, 35 Stat. 1092 [Derived from R.S. § 5510]).
 Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in § 2 of this title.
 A minor change was made in phraseology. 80th Congress House Report No. 304.
 1968 Acts. Senate Report No. 721, see 1968 U.S. Code Cong. and Adm. News, p. 1837.
 1988 Acts. For Related Reports, see 1988 U.S. Code Cong. and Adm. News, p. 5937.
 1994 Acts. House Report No. 103-324, House Report No. 103-489, and House Conference Report No. 103-711, see 1994 U.S. Code Cong. and Adm. News, p. 1801.
 1996 Acts. House Report No. 104-788, see 1996 U.S. Code Cong. and Adm. News, p. 4021.

Amendments

1996 Amendments. Pub.L. 104-294, § 604(b)(14)(B), repealed duplicative amendment by section 320103(b)(1) of Pub.L. 103-322, which required no change in text. See Repeals and Effective Date notes under this section.
 Pub.L. 104-294, § 607(a), substituted "any State, Territory, Commonwealth, Possession, or District" for "any State, Territory, or District".
 1994 Amendments. Pub.L. 103-322, §§ 60006(b), 320103(b), 320201(b), amended section generally. Prior to amendment section read as follows: "Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State,

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Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than \$1,000 or imprisoned not more than one year, or both; and if bodily injury results shall be fined under this title or imprisoned not more than ten years, or both; and if death results, shall be subject to imprisonment for any term of years or for life." See Repeals note set out under this section.

Pub.L. 103-322, § 330016(1)(H), directed that, in text, the phrase "under this title" be substituted for the phrase "not more than \$1,000" after "punishment of citizens, shall be fined". Identical amendment was made by section 320103(b)(1) of Pub.L. 103-322.

1988 Amendments. Pub.L. 100-690 inserted "and if bodily injury results shall be fined under this title or imprisoned not more than ten years, or both," after "or both";.

1968 Amendments. Pub.L. 90-284 provided for imprisonment for any term of years or for life when death results.

Effective and Applicability Provisions

Repeals

Pub.L. 103-322, Title XXXII, § 320103(b)(1), Sept. 13, 1994, 108 Stat. 2109, appearing in the credit of this section, was repealed by Pub.L. 104-294, Title VI, § 604(b)(14)(B), Oct. 11, 1996, 110 Stat. 3507.

Notes of Decisions (35)

O'CONNOR'S COMMENTS

United States Sentencing Guidelines

§§2H1.1, 2H2.1 (offenses involving individual rights)

18 U.S.C.A. § 242, 18 USC § 242

Current through P.L. 116-140.

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