

Nos. 2001D2297, 2019-01006-SC-R11-CD

IN THE
SUPREME COURT OF THE UNITED STATES

MONQUEZE L. SUMMERS - PETITIONER
(Your Name)

VS.

STATE OF TENNESSEE - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO:
UNITED STATES SUPREME COURT

TENNESSEE COURT OF CRIMINAL APPEALS – MIDDLE DIVISION
(NAME OF COURT THAT LAST RULED ON THE MERITS OF YOUR CASE)

MOTION TO FILE OUT-OF-TIME
PETITION FOR WRIT OF CERTIORARI

MONQUEZE L. SUMMERS
(Your Name)

RMSI, UNIT-5, C-212
RIVERBEND MAXIMUM SECURITY INSTITUTION
7475 COCKRILL BEND BOULEVARD
(Address)

NASHVILLE, TENNESSEE 37209-1048
(City, State, Zip Code)

()

(Phone Number)

MOTION TO FILE OUT-OF-TIME PETITION FOR WRIT OF CERTIORARI

Comes now, the Petitioner, Monqueze L. Summers, pro se, pursuant to United States Supreme Court Rules 1 & 30 Computation and Extension of Time and requesting that Petitioner be allowed to file a out of time Petition of Writ of Certiorari. Petitioner's Petition was due in this Honorable Court on March 19, 2021, the above-entitled petition for a writ of certiorari was postmarked March 30, 2021 and received April 5, 2021. Therefore petitioner is filing the motion directing the Clerk of this Court to his Petition for Writ of Certiorari out-of-time. See (Attached April 13, 2021, correspondence for the informing about petitioning to file it out-of-time).

Reason[s] to file out-of-time Petition for Writ of Certiorari:

1. Due to situations beyond Petitioner's control he is not able to file a Petition for Writ of Certiorari within the Time due March 19, 2021, due to Covid-19 Pandemic Riverbend Maximum Security Institution (RMSI) were currently on Lockdown and has been on Lockdown for some time now, Riverbend are still in the Bubble at this present time.

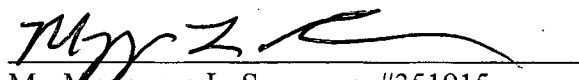
2. Petitioner is requesting for permission to file an out-of-time Petition for Writ of Certiorari pursuant to the Clerk's instructions.

3. Has the time for filing your Petition already expired? Yes or No.

4. Respondent would not be prejudice by the out-of-time filing? Yes or No.

IT IS SO PRAYED:

Respectfully requested,



Mr. Monqueze L. Summers, #351915
RMSI, Unit-5, C-212
Riverbend Maximum Security Prison
7475 Cockrill Bend Blvd.
Nashville, Tennessee 37209-1048

APPENDIX A:
Decision of
State Court of Appeals

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs February 12, 2020

FILED

07/13/2020

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. MONQUEZE SUMMERS

Criminal Court for Davidson County
No. 2001D2297

No. M2019-01006-CCA-R3-CD

JUDGMENT

Came the Appellant, Monqueze L. Summers, Pro Se, and also came the Attorney General, on behalf of the State, and this case was heard on the record of appeal from the Criminal Court for Davidson County; and upon consideration thereof, this Court is of the opinion that there is no error in the judgment of the trial court.

It is, therefore, ordered and adjudged by this Court that the judgment of the trial court is affirmed, and the case is remanded to the Criminal Court for Davidson County for further proceedings in accordance with this opinion and for collection of costs accrued below.

Because it appears to the Court that Appellant is indigent, costs will be taxed to the State of Tennessee.

Thomas T. Woodall, Judge
Robert W. Wedemeyer, Judge
Robert L. Holloway, Jr., Judge

FILED

07/13/2020

Clerk of the
Appellate Courts

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs February 12, 2020

STATE OF TENNESSEE v. MONQUEZE L. SUMMERS

Appeal from the Criminal Court for Davidson County
No. 2001D2297 Angelita Blackshear Dalton, Judge

No. M2019-01006-CCA-R3-CD

Monqueze L. Summers, Defendant, appeals from the trial court's denial of his motion filed pursuant to Tennessee Rule of Criminal Procedure 36.1 in which he argued that his life sentence was illegal. After a thorough review of the record, we affirm the judgment of the trial court.

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

THOMAS T. WOODALL, J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER and ROBERT L. HOLLOWAY, JR., JJ., joined.

Monqueze L. Summers, Nashville, Tennessee, Pro Se.

Herbert H. Slatery III, Attorney General and Reporter; Renee W. Turner, Senior Assistant Attorney General; Glenn R. Funk, District Attorney General; and Amy M. Hunter, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Defendant was convicted of felony murder, two counts of aggravated robbery, and one count of unlawful possession of a handgun in 2002 for his role in events that culminated in the death of one man and the robbery of two other men in August 1999 at Teen Night at 328 Performance Hall in Nashville. *State v. Summers*, 159 S.W.3d 586 (Tenn. Crim. App. 2004). As a result, Defendant was sentenced to an effective sentence of life in prison plus ten years. He was a juvenile at the time of the offenses. On appeal, his convictions and sentences were affirmed. *Id.* at 600. Defendant subsequently sought post-conviction relief on the basis of ineffective assistance of counsel. *State v. Monqueze Summers*, No. M2007-02392-CCA-R3-PC, 2008 WL 4791496, at *1 (Tenn. Crim. App. Nov. 4, 2008), *perm. app. denied* (Tenn. Mar. 16, 2009). The post-conviction court denied relief, and this court affirmed the denial of post-conviction relief on appeal. *Id.*

In January 2019, Defendant filed a motion for correction of an illegal sentence pursuant to Tennessee Rule of Criminal Procedure 36.1. In the motion, Defendant claimed that his sentence was essentially a sentence of life without parole and left him “without a meaningful opportunity for release.” Additionally, Defendant claimed that his sentence should have been considered “aggregate” because he was a juvenile and that he received ineffective assistance of counsel.

The trial court determined Defendant failed to show that his sentence was “not authorized by applicable statutes or that it directly contravenes applicable statute[s]” and failed to state a colorable claim. Moreover, the trial court determined that the allegations of ineffective assistance of counsel were not properly raised in the context of a motion filed under Rule 36.1. As a result, the trial court denied the motion. Defendant appealed.

Analysis

On appeal, Defendant insists that his life sentence is illegal because he was a juvenile at the time he committed the crime, the length of his sentence exceeds his own life expectancy, and he is not entitled to parole. He relies on *Miller v. Alabama*, 567 U.S. 460 (2012), to support his argument. The State counters that the sentence is not illegal, and, therefore Defendant is not entitled to relief.


Rule 36.1 permits a defendant to seek correction of an unexpired illegal sentence at any time. See *State v. Brown*, 479 S.W.3d 200, 211 (Tenn. 2015). “[A]n illegal sentence is one that is not authorized by the applicable statutes or that directly contravenes an applicable statute.” Tenn. R. Crim. P. 36.1(a)(2). Our supreme court interpreted the meaning of “illegal sentence” as defined in Rule 36.1 and concluded that the definition “is coextensive, and not broader than, the definition of the term in the habeas corpus context.” *State v. Wooden*, 478 S.W.3d 585, 594-95 (Tenn. 2015). The court then reviewed the three categories of sentencing errors: clerical errors (those arising from a clerical mistake in the judgment form), appealable errors (those for which the Sentencing Act specifically provides a right of direct appeal), and fatal errors (those so profound as to render a sentence illegal and void). *Id.* at 595. Commenting on appealable errors, the court stated that those “generally involve attacks on the correctness of the methodology by which a trial court imposed sentence.” *Id.* In contrast, fatal errors include “sentences imposed pursuant to an inapplicable statutory scheme, sentences designating release eligibility dates where early release is statutorily prohibited, sentences that are ordered to be served concurrently where statutorily required to be served consecutively, and sentences not authorized by any statute for the offenses.” *Id.* The court held that only fatal errors render sentences illegal. *Id.*

A trial court may summarily dismiss a Rule 36.1 motion if it does not state a colorable claim for relief. Tenn. R. Crim. P. 36.1(b)(2). A colorable claim is "a claim that, if taken as true and viewed in a light most favorable to the moving party, would entitle the moving party to relief under Rule 36.1." *Wooden*, 478 S.W.3d at 593. "[A]n appellate court may determine, in the first instance, whether the allegations of a Rule 36.1 motion, and any supporting materials, state a colorable claim for relief under Rule 36.1." *Id.* at 594.

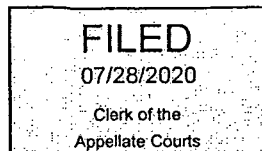
Defendant argues that a juvenile sentenced to a life sentence, which requires fifty-one years of incarceration prior to release, is effectively a life sentence without the possibility of parole and, therefore, violates the Eighth Amendment. This court has repeatedly rejected this argument. See, e.g., *State v. Antonious Johnson and Rodney Williams*, No. W2018-01125-CCA-R3-CD, 2019 WL 4008113, at * (Tenn. Crim. App. Aug. 23, 2019), *perm. app. denied* (Tenn. Dec. 9, 2019); *State v. Walter Collins*, No. W2016-01819-CCA-R3-CD, 2018 WL 1876333, at *19-21 (Tenn. Crim. App. Apr. 18, 2018), *perm. app. denied* (Tenn. Aug. 8, 2018); *State v. Martiness Henderson*, No. W2016-00911-CCA-R3-CD, 2018 WL 1100972, at *1, *3 (Tenn. Crim. App. Feb. 26, 2018), *no perm. app. filed*; *State v. Jonathan Gutierrez*, No. M2015-01235-CCA-R3-CD, 2017 WL 2274644, at *15 (Tenn. Crim. App. May 24, 2017), *perm. app. denied* (Tenn. Sept. 21, 2017); *Martez D. Matthews v. State*, No. M2015-02422-CCA-R3-PC, 2016 WL 7395674, at *4 (Tenn. Crim. App. Dec. 21, 2016), *perm. app. denied* (Tenn. Apr. 13, 2017); *Charles Everett Lowe-Kelley v. State*, No. M2015-00138-CCA-R3-PC, 2016 WL 742180, at *8 (Tenn. Crim. App. Feb. 24, 2016), *perm. app. denied* (Tenn. June 23, 2016); *Cyntoia Denise Brown v. State*, No. M2013-00825-CCA-R3-PC, 2014 WL 5780718, at *21 (Tenn. Crim. App. Nov. 6, 2014), *perm. app. denied* (Tenn. May 15, 2015). In this case, Defendant's sentence of life plus ten years was authorized at the time of the offense. In other words, it was not an illegal sentence. Consequently, Defendant has not stated a colorable claim for relief. See *State v. Sammie Lee Taylor*, No. W2015-01831-CCA-R3-CD, 2016 WL 3883566, at *4 (Tenn. Crim. App. June 6, 2016) (determining the defendant's claim under *Miller* was not a proper basis for relief under Rule 36.1). Additionally, Defendant's claim that trial counsel was ineffective is not properly addressed in a Rule 36.1 motion. Moreover, Defendant already sought, and was denied, post-conviction relief. See *Monqueze Summers*, 2008 WL 4791496, at *1. Therefore, Defendant is not entitled to relief.

CONCLUSION

The judgment of the trial court is affirmed.


THOMAS T. WOODALL, JUDGE

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE



STATE OF TENNESSEE v. MONQUEZE L. SUMMERS

Criminal Court for Davidson County
No. 2001D2297

No. M2019-01006-CCA-R3-CD

ORDER

Defendant, Monqueze L. Summers, has filed a petition to rehear in this case, in which this court affirmed the trial court's dismissal of Defendant's motion to set aside his sentence of life imprisonment. We have reviewed the petition to rehear, and conclude it has no merit.

Accordingly, the petition to rehear is denied.

THOMAS T. WOODALL, JUDGE
ROBERT W. WEDEMAYER, JUDGE
ROBERT L. HOLLOWAY, JR., JUDGE

APPENDIX B:
Decision of
State Trial Court

(a)(1) "Either the defendant or the state may seek to correct an illegal sentence by filing a motion to correct an illegal sentence in the trial court in which the judgment of conviction was entered. Except for a motion filed by the state pursuant to subdivision (d) of this rule, a motion to correct an illegal sentence must be filed before the sentence set forth in the judgment order expires. The movant must attach to the motion a copy of each judgment order at issue and may attach other relevant documents. The motion shall state that it is the first motion for the correction of the illegal sentence or, if a previous motion has been made, the movant shall attach to the motion a copy of each previous motion and the court's disposition thereof or shall state satisfactory reasons for the failure to do so."

An illegal sentence is defined as a sentence "...that is not authorized by the applicable statutes or that directly contravenes an applicable statute." *State v. Wooden*, 478 S.W.3d 585, 594-595 (Tenn. 2015). The definition of illegal sentence in Rule 36.1 is coextensive with, and not broader than, the definition of the term in the habeas corpus context." *Id.* In order to avoid summary denial of a Rule 36.1 motion, a Petitioner's motion must state with particularity the factual allegations" which "sufficiently state a colorable claim." *Id.* at 594. A colorable claim means a claim that, if taken as true and viewed in a light most favorable to the moving party, would entitle the moving party to relief under Rule 36.1." *Id.* at 593.

In the present case, by arguing that his sentence is equivalent to a life sentence without parole that should be considered an aggregate sentence, the Petitioner has failed to show that his sentence is one not authorized by applicable statutes or that it directly contravenes applicable statute. Additionally, the Petitioner's claim fails to state with particularity the factual allegations which sufficiently state a colorable claim. Furthermore, the claim that his trial attorney was ineffective is not legally asserted pursuant to the applicable post-conviction statutory scheme.

For these reasons, **IT IS SO ORDERED**, the Petitioner's motion is respectfully,
DENIED.

Entered this 17th day of May 2019



Angelita Blackshear Dalton
Judge, Division II
Davidson County Criminal Court

cc: The Honorable Amy Hunter
Office of the District Attorney General

Mr. Monqueze Summers
Pro Se Petitioner
#351915
Riverbend Maximum Security Institution
7475 Cockrill Bend Boulevard
Nashville, Tennessee 37209

APPENDIX C:
Decision of
State Supreme Court
Denying Review

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED

10/13/2020

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. MONQUEZE SUMMERS

Criminal Court for Davidson County
No. 2001D2297

No. M2019-01006-SC-R11-CD

ORDER

Upon consideration of the application for permission to appeal of Monqueze L. Summers and the record before us, the application is denied. Further, the Motion for Appointment of Counsel filed by Monqueze Summers is denied; and the Motion to Proceed as a Poor Person filed by Monqueze Summers is dismissed as unnecessary as the appellant has already been determined to be indigent for purposes of appeal.

PER CURIAM

APPENDIX D:
Order of
State Supreme Court
Denying Rehearing

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED

10/20/2020

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. MONQUEZE SUMMERS

Criminal Court for Davidson County
No. 2001D2297

No. M2019-01006-SC-R11-CD

ORDER

On October 13, 2020, this Court denied the application for permission to appeal filed by Monqueze Summers. On October 19, 2020, Mr. Summers filed a Motion in Opposition of Dismissal and Motion for Second Chance. Upon due consideration, the petition to rehear is DENIED.

PER CURIAM

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