

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

FILED

09/29/2022

Clerk of the
Appellate Courts

DAVID FRAZIER v. STATE OF TENNESSEE

**Criminal Court for Shelby County
No. 10-06373**

No. W2021-01475-SC-R11-HC

ORDER

Upon consideration of the application for permission to appeal of David Frazier and the record before us, the application is denied.

PER CURIAM

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

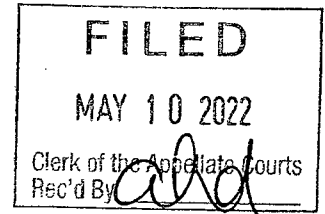
Assigned on Briefs May 3, 2022

DAVID FRAZIER v. STATE OF TENNESSEE

Appeal from the Criminal Court for Shelby County
No. 10-06373

No. W2021-01475-CCA-R3-HC

JUDGMENT



Came the petitioner, David Frazier, by counsel, and the State, by the Attorney General, and this cause was heard on the record on appeal from the Criminal Court for Shelby County; and upon consideration thereof, this court is of the opinion that there is no error in the judgment of the habeas corpus court.

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

It appearing that the petitioner, David Frazier, is indigent, the costs of the appeal are taxed to the State of Tennessee.

James Curwood Witt, Jr., Judge
Camille R. McMullen, Judge
Timothy L. Easter, Judge

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs May 3, 2022

FILED

05/10/2022

Clerk of the
Appellate Courts

DAVID FRAZIER v. STATE OF TENNESSEE

Appeal from the Criminal Court for Shelby County
No. 10-06373 Carolyn Wade Blackett, Judge

No. W2021-01475-CCA-R3-HC

The petitioner, David Frazier, appeals the summary dismissal of his petition for writ of habeas corpus, which petition challenged his Shelby County Criminal Court guilty-pleaded conviction of rape of a child, arguing that the trial court's order denying habeas corpus relief does not contain sufficient factual and legal findings to facilitate appellate review. Discerning no error, we affirm.

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

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which CAMILLE R. McMULLEN, and TIMOTHY L. EASTER, JJ., joined.

James Shae Atkinson, Memphis, Tennessee, for the appellant, David Frazier.

Herbert H. Slatery III, Attorney General and Reporter; Katherine C. Redding, Assistant Attorney General; Amy P. Weirich, District Attorney General; and Leslie Byrd, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

We glean from the sparse record that the petitioner pleaded guilty to rape of a child on April 21, 2014, and that the trial court imposed a sentence of 20 years' incarceration to be served at 100 percent by operation of law. In June 2021, the petitioner filed a petition for writ of habeas corpus seeking relief on grounds that he "was unaware of the mandatory nature of his sentences and he was not eligible for probation or community corrections," that he "was not advised by the trial court that he was required to register" as a sex offender and submit to community supervision for life, that the trial court failed to follow the mandates of Tennessee Rule of Criminal Procedure 11 when taking the petitioner's plea, that the trial court improperly denied his "motion for discovery," that the State suppressed exculpatory evidence, that the trial court erred by denying his Tennessee

Rule of Criminal Procedure 35 motion to reduce his sentence, and that he was deprived of the effective assistance of counsel. The habeas corpus court appointed counsel to assist the petitioner with his claims, but no amended petition for writ of habeas corpus appears in the record on appeal. Instead, the habeas corpus court summarily dismissed the petition, finding that the petitioner was not entitled to relief under the terms of the habeas corpus statute and that, according to the petitioner's counsel, the petitioner "is aware that his request is inappropriate for a Writ of Habeas Corpus."

In this timely appeal, the petitioner asserts that the habeas corpus court erred by summarily dismissing his petition without making any findings of fact or conclusions of law and that the court's meager order was insufficient to facilitate appellate review. The State contends that summary dismissal was appropriate because the petitioner "failed to demonstrate that his judgment was void or that his confinement was illegal."

"The determination of whether habeas corpus relief should be granted is a question of law." *Faulkner v. State*, 226 S.W.3d 358, 361 (Tenn. 2007) (citing *Hart v. State*, 21 S.W.3d 901, 903 (Tenn. 2000)). Our review of the habeas corpus court's decision is, therefore, "de novo with no presumption of correctness afforded to the [habeas corpus] court." *Id.* (citing *Killingsworth v. Ted Russell Ford, Inc.*, 205 S.W.3d 406, 408 (Tenn. 2006)). The writ of habeas corpus is constitutionally guaranteed, *see* U.S. Const. art. 1, § 9, cl. 2; Tenn. Const. art. I, § 15, but has been regulated by statute for more than a century, *see Ussery v. Avery*, 432 S.W.2d 656, 657 (Tenn. 1968). Tennessee Code Annotated section 29-21-101 provides that "[a]ny person imprisoned or restrained of liberty, under any pretense whatsoever, except in cases specified in § 29-21-102, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment and restraint." T.C.A. § 29-21-101. Despite the broad wording of the statute, a writ of habeas corpus may be granted only when the petitioner has established a lack of jurisdiction for the order of confinement or that he is otherwise entitled to immediate release because of the expiration of his sentence. *See Ussery*, 432 S.W.2d at 658; *State v. Galloway*, 45 Tenn. (5 Cold.) 326 (1868). The purpose of the state habeas corpus petition is to contest a void, not merely a voidable, judgment. *State ex rel. Newsom v. Henderson*, 424 S.W.2d 186, 189 (Tenn. 1968). A void conviction is one which strikes at the jurisdictional integrity of the trial court. *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993); *see State ex rel. Anglin v. Mitchell*, 575 S.W.2d 284, 287 (Tenn. 1979); *Passarella v. State*, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994).

To be sure, the habeas corpus court's order inaccurately described the conviction offense and would have benefitted from more robust findings of both fact and law. That being said, the order was sufficient to dispose of the petition, and, upon our de novo review, we affirm the denial of habeas corpus relief. Claims of an unknowing or involuntary guilty plea, ineffective assistance of counsel, the suppression of evidence, and

the trial court's compliance with Rule 11 or that court's ruling on the petitioner's Rule 35 motion are not cognizable in a habeas corpus proceeding. Indeed, none of the claims raised in the petition, even if true, would avail the petitioner of habeas corpus relief.

Accordingly, we affirm the order of the trial court summarily dismissing the petition for writ of habeas corpus.

JAMES CURWOOD WITT, JR., JUDGE

Case Number: 10 06373 Count # 1 Counsel for the State: KATIE RATTON G.#21 2248
 Judicial District: 30th Judicial Division: 4 Counsel for the Defendant: WILLIAM JOHNSON
 State of Tennessee ☐ Retained ☒ Pub Def Appt ☐ Private Atty Appt
 vs. ☐ Counsel Waived ☐ Pro Se
 Defendant: DAVID FRAZIER Alias: DAVID FRAZIER Date of Birth: 12/31/1973 Sex: M
 Race: B SSN: XXX-XX-3615 Driver License #: Issuing State: 4/22/14
 State ID #: County Offender ID # (if applicable): 000178364 TOMIS/TDOC #: 4/22/14
 Relationship to Victim: Victim's Age: 4/22/14
 State Control #: 790010635365 Arrest Date: Indictment Filing Date: 10/12/2010

JUDGMENT ☐ Original ☐ Amended ☒ Corrected

Comes the District Attorney General for the State and the defendant with counsel of record for entry of judgment.

On the 22th day of April, 20 2014, the defendant:

☒ Pled Guilty ☐ Dismissed/Nolle Prosequi
☐ Pled Nolo Contendere
☐ Pled Guilty - Certified Question Findings Incorporated by Reference
 Is found: ☐ Guilty ☐ Not Guilty
☐ Jury Verdict ☐ Not Guilty by Reason of Insanity
☐ Bench Trial

Indictment: Class (circle one) 1st ☒ B C D E ☒ Felony ☐ Misdemeanor
 Indicted Offense Name AND TCA §: 39-13-522 RAPE OF A CHILD
 Amended Offense Name AND TCA §: 39-13-504 AGG SEXUAL BATTERY
 Offense Date: 1/2008-9/2009 County of Offense: SHELBY
 Conviction Offense Name AND TCA §: 39-13-504 AGG SEXUAL BATTERY
 Conviction: Class (circle one) 1st A ☒ C D E ☒ Felony ☐ Misdemeanor
 Is this conviction offense methamphetamine related? ☐ Yes ☒ No
 Sentence Imposed Date: 4/22/2014

After considering the evidence, the entire record, and in the case of sentencing, all factors in Tennessee Code Annotated Title 40, Chapter 35, all of which are incorporated by reference herein, it is ORDERED and ADJUDGED that the conviction described above is imposed hereby and that a sentence and costs are imposed as follows:

Offender Status (Check One)	Release Eligibility (Check One)	Concurrent with:	Pretrial Jail Credit Period(s):
<input type="checkbox"/> Mitigated <input type="checkbox"/> Standard <input checked="" type="checkbox"/> Multiple <input type="checkbox"/> Persistent <input type="checkbox"/> Career <input type="checkbox"/> Repeat Violent	<input type="checkbox"/> Mitigated 20% <input type="checkbox"/> Mitigated 30% <input type="checkbox"/> Standard 30% <input type="checkbox"/> Multiple 35% <input type="checkbox"/> Persistent 45% <input type="checkbox"/> Career 60% <input type="checkbox"/> Agg Rob 85% <input type="checkbox"/> Violent 100% <input type="checkbox"/> Repeat Viol 100%	<input type="checkbox"/> 1 st Degree Murder <input type="checkbox"/> Drug Free Zone <input type="checkbox"/> Gang Related	From <u>11-4-10</u> to <u>4-22-14</u> From _____ to _____ From _____ to _____ From _____ to _____

Sentenced To: ☒ TDOC ☐ County Jail ☐ WorkhouseSentence Length: 20 Years _____ Months _____ Days _____ Hours ☐ Life ☐ Life w/out Parole ☐ DeathMandatory Minimum Sentence Length: 39-17-417, 39-13-513, 39-13-514, or 39-17-432 in Prohibited Zone or 55-10-401 DUI 4th Offense or 39-17-1324 Possession/Employment of Firearm or 40-39-208, -211 Violation of Sex Offender Registry

Period of incarceration to be served prior to release on probation or Community Corrections: _____ Months _____ Days _____ Hours

Minimum service prior to eligibility for work release, furlough, trusty status and rehabilitative programs: _____ % (Misdemeanor Only)

Alternative Sentence: ☐ Sup Prob ☐ Unsup Prob ☐ Comm Corr (CHECK ONE BOX) _____ Years _____ Months _____ Days Effective: _____WAS DRUG COURT ORDERED AS A CONDITION OF THE ALTERNATIVE SENTENCE? ☐ Yes ☐ No

Court Ordered Fees and Fines: Costs to be Paid by
 \$ _____ Court Costs ☒ Defendant State
 \$ _____ Fine Assessed
 \$ _____ Traumatic Brain Injury Fund (68-55-301 et seq.)
 \$ _____ Drug Testing Fund (TN Drug Control Act)
 \$ _____ CICF \$ _____ Sex Offender Tax
 \$ _____ Other: _____

Restitution: Victim Name _____
 Address _____
 Total Amount \$ _____ Per Month \$ _____
☐ Unpaid Community Service: _____ Hours _____ Days _____ Weeks _____ Months

- ☒ The Defendant having been found guilty is rendered infamous and ordered to provide a biological specimen for the purpose of DNA analysis.
☐ 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.
☐ Pursuant to Title 68, Chapter 11, Part 10, the clerk shall forward this judgment to the Department of Health.

Special Conditions

Requies at violent sex offender & community supervision for life
4-22-14

Glenn Wright

Judge's Name

Counsel for State/Signature (optional)

Judge's Signature

Defendant/Defendant's Counsel/Signature (optional)

Date of Entry of Judgment

I, _____, clerk, hereby certify that, before entry by the court, a copy of this judgment was made available to the party or parties who did not provide a signature above.

IN THE CRIMINAL COURT OF TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT
AT MEMPHIS

DIVISION 4

DAVID FRAZIER,
Petitioner

V.

NO. 10 06373

State of Tennessee,
Respondent

SET: November 15, 2021

ORDER DENYING DEFENDANT'S PETITION FOR WRIT OF HABEAS
CORPUS

This cause came to be heard upon the oral motion of the State of Tennessee and from the entire record in this cause.

Tenn. Code Ann. §29-21-101 (b)(2) states, "Persons restrained of their liberty pursuant to a guilty plea and negotiated sentence are not entitled to the benefits of this writ on any claim that: the Petitioner's sentence included a release eligibility percentage where the petitioner was not entitled to an early release."

The Petitioner's petition is based on the grounds that he, "was unaware of the mandatory nature of his sentences and was not eligible for probation or community supervision." Mr. Frazier entered a guilty plea to Aggravated Sexual Battery on April 22, 2014. Mr. Frazier was sentenced to 20 years as a Range II Offender with sentence to be served as a 100% Violent Offender.

In addition, this Court appointed Shae Atkinson to discuss the petition and its grounds with Petitioner. Per Mr. Atkinson, Petitioner is aware that his request is inappropriate for a Writ of Habeas Corpus.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

The Petitioner's basis of his request for relief is specifically prohibited under the statute and his petition is denied.

This the _____ day of _____, 2021.

JUDGE

Division IV

11-15-21
Heidi Klein, Clerk
BY SV D.C.