

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT JACKSON  
Assigned on Briefs July 10, 2018

FILED

08/08/2018

Clerk of the  
Appellate Courts

**STATE OF TENNESSEE v. ANDREA SPENCER**

**Appeal from the Criminal Court for Shelby County  
No. 00-03985, 86, 87, 88, 89      Lee V. Coffee, Judge**

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**No. W2017-02475-CCA-R3-CD**

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The Appellant, Andrea Spencer, appeals as of right from the Shelby County Criminal Court's summary denial of his Tennessee Rule of Criminal Procedure 36.1 motion to correct an illegal sentence. The Appellant contends that the trial court erred because his motion stated a colorable claim for sentencing outside the statutory ranges and a Blakely v. Washington violation. Discerning no error, we affirm the judgment of the trial court.

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

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which ALAN E. GLENN and CAMILLE R. MCMULLEN, JJ., joined.

Andrea Spencer, Clifton, Tennessee, Pro Se.

Herbert H. Slatery III, Attorney General and Reporter; Caitlin Smith, Assistant Attorney General; Amy P. Weirich, District Attorney General; and Alanda Horne Dwyer, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

The Appellant was convicted of one count of aggravated rape, a Class A felony; two counts of aggravated burglary, a Class C felony; two counts of aggravated kidnapping, a Class B felony; and one count of sexual battery, a Class E felony. See State v. Andrea Spencer, No. W2002-01483-CCA-R3-CD, 2003 WL 22204526, at \*1, \*4 (Tenn. Crim. App. Sep. 18, 2003), perm. app. denied (Tenn. Jan. 5, 2004). On appeal, this court reduced his effective sentence from eighty-four to eighty years due to the two aggravated kidnapping convictions violating the double jeopardy principle and enhancement factors that were incorrectly applied to one of his aggravated burglary charges. Id.

Following that direct appeal, the Appellant then filed a petition for post-conviction relief. The post-conviction court denied relief, and this court affirmed, finding no merit to the Appellant's claim that he was denied effective assistance of counsel at trial because his counsel failed to properly investigate and prepare a defense. See Andrea Spencer v. State, No. W2005-01050-CCA-R3-PC, 2006 WL 119559, at \*1 (Tenn. Crim. App. Jan. 17, 2006), perm. app. denied (Tenn. July 3, 2006).

On October 13, 2017, the Appellant filed a Tennessee Rule of Criminal Procedure 36.1 motion to correct an illegal sentence. The motion alleged that the Appellant was sentenced outside of the statutorily prescribed ranges and that the trial court's use of enhancement factors not found beyond a reasonable doubt by a jury violated Blakely v. Washington, 542 U.S. 296 (2004). The trial court summarily dismissed the motion for failure to state a colorable claim because the Appellant failed to allege any evidence to support his motion.

On appeal, the Appellant raises the same issues as stated in his Rule 36.1 motion. Rule 36.1 provides that either the defendant or the State "may seek to correct an illegal sentence." Tenn. R. Crim. P. 36.1(a)(1). An "[i]llegal sentence" is defined in the rule as a sentence "that is not authorized by the applicable statutes or that directly contravenes an applicable statute." Tenn. R. Crim. P. 36.1(a)(2). The term "illegal sentence" "is synonymous with the habeas corpus concept of a 'void' sentence." See Cox v. State, 53 S.W.3d 287, 292 (Tenn. Crim. App. 2001), overruled on other grounds; Moody v. State, 160 S.W.3d 512, 515 (Tenn. 2005).

"[F]ew sentencing errors [will] render [a sentence] illegal." State v. Wooden, 478 S.W.3d 585, 595 (Tenn. 2015). Examples of illegal sentences 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 offense." Id. Conversely, "attacks on the correctness of the methodology by which a trial court imposed [a] sentence" will not rise to the level of an illegal sentence. Id.

The Appellant claims he was sentenced outside the statutorily prescribed ranges for his convictions. The Appellant was sentenced as a Range II, multiple offender to consecutive terms of forty years for aggravated rape, twenty years for aggravated kidnapping, ten years for one count of aggravated burglary, seven years for another count of aggravated burglary, and three years for sexual battery. Each of these sentences was within range pursuant Tennessee Code Annotated section 40-35-112(b). Therefore, this contention is without merit.

With respect to the Appellant's claim that his sentences were enhanced in violation of Blakely, this court has previously held that a Blakely violation would not rise to the level of an illegal sentence for Rule 36.1 purposes. See State v. Rafael Antonio Bush, No. M2014-01193-CCA-R3-CD, 2014 WL 7204637, at \*4 (Tenn. Crim. App. Dec. 18, 2014), perm. app. denied (Tenn. Mar. 12, 2015). That holding is consistent with this court's holdings in habeas corpus cases that a Blakely violation would render a sentence merely voidable, not void. See Jackie F. Curry v. Howard Carlton, Warden, No. E2011-00607-CCA-R3-HC, 2011 WL 4600621, at \*5 (Tenn. Crim. App. Oct. 6, 2011); Gene Shelton Rucker v. State, No. E2010-00440-CCA-R3-HC, 2010 WL 4324320, at \*2 (Tenn. Crim. App. Nov. 1, 2010); Billy Merle Meeks v. Ricky J. Bell, Warden, No. M2005-00626-CCA-R3-HC, 2007 WL 4116486, at \*7 (Tenn. Crim. App. Nov. 13, 2007). Accordingly, we conclude that the Appellant's Rule 36.1 motion failed to state a colorable claim for relief and affirm the trial court's denial of the motion.

Upon consideration of the foregoing and the record as a whole, the judgment of the trial court is affirmed.

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D. KELLY THOMAS, JR., JUDGE