

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs July 15, 2026

FILED

07/23/2026

Clerk of the
Appellate Courts

WEBSTER MALONE v. STANLEY LOVETT, WARDEN

Appeal from the Circuit Court for Rutherford County
No. 82251 James A. Turner, Judge

No. M2026-00222-CCA-R3-HC

Petitioner, Webster Malone, appeals the summary dismissal of his petition for habeas corpus relief. Pursuant to Rule 20 of the Rules of the Court of Criminal Appeals, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Order of the Circuit Court
Affirmed Pursuant to Rule 20, Rules of the Court of Criminal Appeals

JILL BARTEE AYERS, J., delivered the opinion of the court, in which CAMILLE R. MCMULLEN and TOM GREENHOLTZ, JJ. joined.

Larry Samuel Patterson, Jr., Columbia, Tennessee, for the appellant, Webster Malone.

Jonathan Skrmetti, Attorney General and Reporter; William C. Lundy, Assistant Attorney General; Jennings H. Jones, District Attorney General; for the appellee, State of Tennessee.

MEMORANDUM OPINION

Petitioner was convicted of two counts of selling under 0.5 grams of cocaine and sentenced as a career offender to fifteen years' imprisonment. He appealed, and this court affirmed the judgments. *State v. Malone*, No. M2023-00058-CCA-R3-CD, 2023 WL 8296000, at *1, *6 (Tenn. Crim. App. Dec. 1, 2023), *no perm. app. filed*. Petitioner then filed a post-conviction petition alleging ineffective assistance of counsel, an illegal career-offender sentence, and fabrication of evidence by the State. After Petitioner's appointed counsel withdrew, his second appointed attorney moved to withdraw. The post-conviction court granted the motion, advising Petitioner that his conduct had

resulted in a waiver of his statutory right to post-conviction counsel. Petitioner proceeded pro se. Following an evidentiary hearing, the post-conviction court denied the petition for post-conviction relief. Petitioner appealed, but the appeal was dismissed for want of prosecution. *See Malone v. State*, M2024-01618-CCA-R3-PC (Tenn. Crim. App. Jul. 16, 2025) (unpublished order).

On December 16, 2025, Petitioner filed a petition for a writ of habeas corpus alleging that he was denied counsel during the post-conviction proceedings, that his sentence was illegal because the State filed an untimely notice for enhanced punishment, and that he received ineffective assistance of counsel at trial. The State moved to dismiss, asserting that the petition raised non-cognizable claims and failed to comply with the statutory procedural requirements. The habeas corpus court summarily dismissed the petition, concluding that Petitioner had not presented a cognizable ground for habeas corpus relief and that his petition failed to meet the statutory prerequisites. As to the claims of ineffective assistance and the legality of his sentence, the court noted that both issues had been previously litigated and rejected on post-conviction and direct appeal. Petitioner filed a timely appeal to this court.

In this appeal, Petitioner maintains that he was denied the effective assistance of trial counsel and deprived of his right to counsel during his post-conviction proceedings. Although he no longer challenges his career-offender classification, he asserts for the first time that he also received ineffective assistance of appellate counsel and that his right of confrontation was violated at trial. The State responds that the habeas corpus court properly dismissed the petition because it failed to present any cognizable grounds for habeas corpus relief and did not satisfy the statutory prerequisites for obtaining the writ.

Habeas corpus relief is generally available to “[a]ny person imprisoned or restrained of liberty” whose judgment is void or whose sentence has expired. T.C.A. § 29-21-101; *Summers v. State*, 212 S.W.3d 251, 255 (Tenn. 2007). A petitioner has the burden of proving by a preponderance of the evidence that a judgment is void or that a sentence has expired. *State v. Davenport*, 980 S.W.2d 407, 409 (Tenn. Crim. App. 1998). A void judgment exists if it appears from the face of the judgment or the record that the convicting court lacked jurisdiction or authority to sentence the defendant or that the defendant’s sentence has expired. *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993); *see Moody v. State*, 160 S.W.3d 512, 515 (Tenn. 2005). In contrast, “[a] voidable judgment is one that is facially valid and requires proof beyond the face of the record or judgment to establish its invalidity.” *Summers*, 212 S.W.3d at 256; *see State v. Ritchie*, 20 S.W.3d 624, 630 (Tenn. 2000).

A habeas corpus court may dismiss a petition for relief without an evidentiary hearing or the appointment of counsel when the petition fails to state a cognizable claim.

T.C.A. § 29-21-109; *see also Hickman v. State*, 153 S.W.3d 16, 20 (Tenn. 2004). Furthermore, “A trial court properly may choose to summarily dismiss a petition for failing to comply with the statutory procedural requirements.” *Summers*, 212 S.W.3d at 260; *see Hickman*, 153 S.W.3d at 21; *see also Archer*, 851 S.W.2d at 165. Tennessee Code Annotated section 29-21-107(b) requires that the petition shall state:

- (1) That the person in whose behalf the writ is sought, is illegally restrained of liberty, and the person by whom and place where restrained, mentioning the name of such person, if known, and, if unknown, describing the person with as much particularity as practicable;
- (2) The cause or pretense of such restraint according to the best information of the applicant, and if it be by virtue of any legal process, a copy thereof shall be annexed, or a satisfactory reason given for its absence;
- (3) That the legality of the restraint has not already been adjudged upon a prior proceeding of the same character, to the best of the applicant’s knowledge and belief; and
- (4) That it is first application for the writ, or, if a previous application has been made, a copy of the petition and proceedings thereon shall be produced, or satisfactory reasons be given for the failure so to do.

T.C.A. § 29-21-107(b).

The determination of whether to grant habeas corpus relief is a question of law. *Summers*, 212 S.W.3d at 255. This court reviews a habeas corpus court’s findings de novo without a presumption of correctness. *Hogan v. Mills*, 168 S.W.3d 753, 755 (Tenn. 2005).

Because Petitioner raises ineffective assistance of appellate counsel and a violation of his right of confrontation for the first time on appeal, these claims are waived. *See State v. Johnson*, 970 S.W.2d 500, 508 (Tenn. Crim. App. 1996) (“Issues raised for the first time on appeal are considered waived.”).

Here, the habeas corpus court properly dismissed the petition because it failed to comply with the mandatory procedural requirements for seeking habeas corpus relief. Petitioner failed to attach the judgments he seeks to challenge or state whether “the legality of his restraint had been previously adjudicated.” T.C.A. § 29-21-107(b)(2), (3). The habeas corpus court was justified in dismissing the petition on this basis alone. *Hickman*, 153 S.W.3d at 21.

Notwithstanding Petitioner's failure to follow procedural requirements, the habeas corpus court also properly dismissed the petition because Petitioner's remaining issues – those not subject to waiver – are not cognizable. Claims alleging ineffective assistance of counsel, as well as challenges based on the denial or forfeiture of post-conviction counsel, are not recognized grounds for habeas corpus relief because, even if proven, they would render the judgment merely voidable rather than void. *See Young v. State*, No. M2016-02333-CCA-R3-HC, 2018 WL 444202, at *4 (Tenn. Crim. App. Jan 17, 2018) (recognizing that ineffective assistance of counsel is not a cognizable claim in habeas); *see also Tate v. Perry*, No. M2024-01049-CCA-R3-HC, 2025 WL 1166024, at *3 (Tenn. Crim. App. Apr. 22, 2025), *no perm. app. filed*; *Lowe v. State*, No. E2022-00285-CCA-R3-HC, 2022 WL 13899444, at *5 (Tenn. Crim. App. Oct. 24, 2022) (holding that the denial of the right to counsel is not a cognizable claim in habeas corpus); *see also Watson v. State*, No. M2011-01726-CCA-R3-HC, 2012 WL 1417313, at *1 (Tenn. Crim. App. Apr. 20, 2012).

When an opinion would have no precedential value, this court may affirm the judgment or action of the trial court by memorandum opinion when the judgment is rendered or the action taken in a proceeding without a jury and such judgment or action is not a determination of guilt, and the evidence does not preponderate against the finding of the trial judge. *See Tenn. Ct. Crim. App. R. 20*. We conclude that this case satisfies the criteria of Rule 20. The judgment of the habeas corpus court is affirmed in accordance with Rule 20, Rules of the Court of Criminal Appeals.

s/ *Jill Bartee Ayers*
JILL BARTEE AYERS, JUDGE