

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs September 2, 2026

FILED

09/23/2026

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. BILLY R. BOYD

Appeal from the Criminal Court for Shelby County
No. 16-02737 Jennifer Johnson Mitchell, Judge

No. W2025-01182-CCA-R3-CD

Billy R. Boyd, Defendant, seeks review of the trial court's dismissal of his motion to correct an illegal sentence filed pursuant to Tennessee Rule of Criminal Procedure 36.1. Even though Defendant filed an untimely notice of appeal, we waive the timeliness in the interest of justice. However, because we determine Defendant failed to state a colorable claim for relief, we affirm the judgment of the trial court.

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

TIMOTHY L. EASTER, J., delivered the opinion of the court, in which J. ROSS DYER and TOM GREENHOLTZ, JJ., joined.

Billy R. Boyd, Pro Se, Henning, Tennessee.

Jonathan Skrmetti, Attorney General and Reporter; Kelly M. Telfeyan, Assistant Attorney General; Steven J. Mulroy, District Attorney General, for the appellee, State of Tennessee.

OPINION

Defendant was indicted on April 21, 2016¹ for two counts of first degree murder, one count of attempted first degree murder, and one count of employing a firearm with the intent to commit a felony.

¹ Defendant did not include the indictment, transcript of the plea hearing, or transcript of the sentencing hearing in the record on appeal. As a result, we have relied on the procedural history from the trial court's order denying the motion filed under Rule 36.1 and what we can glean from the record.

Defendant pled guilty to one count of second degree murder, one count of attempted first degree murder, and one count of employing a firearm with the intent to commit a felony in exchange for the dismissal of one murder count. The plea agreement specified Defendant pled to an effective out-of-range sentence of twenty-seven years as a Range II multiple offender. On December 19, 2019, the court sentenced Defendant to twenty-seven years as a Range II multiple offender on the charge of second degree murder. The judgment sheet, signed by Defendant, explicitly states as follows in the Special Conditions:

BY AGREEMENT OF THE PARTIES, THE DEFENDANT, WHO WAS INDICTED FOR FIRST DEGREE MURDER IS PLEADING TO SECOND DEGREE MURDER AS A RANGE II OFFENDER EVEN THOUGH THE DEFENDANT IS TECHNICALLY A RANGE I OFFENDER. THIS IS TO MAKE THE 27 YEAR SENTENCE LEGAL PURSUANT TO AGREEMENT OF THE PARTIES.

In January of 2025, Defendant filed a pro se motion to correct an illegal sentence pursuant to Tennessee Rule of Criminal Procedure 36.1, arguing that he was improperly sentenced as a Range II multiple offender when he should have been classified as a Range I standard offender. He also argued that his guilty plea was entered unknowingly. On July 3, 2025, the trial court entered an order summarily denying Defendant's motion for failure to state a colorable claim. The trial court found that Defendant failed to establish his sentence was "not authorized by the applicable statute." The trial court also found Defendant's claim that he was coerced into a plea agreement was "not a colorable claim" because it failed to address whether the sentence was illegal. Defendant's notice of appeal was dated August 1, 2025, and was stamped as received by this Court on August 6, 2025. The certificate of service for the notice of appeal states that a copy of the notice was "mailed postage prepaid" to this Court and the State on August 1, 2025.

Analysis

On appeal, Defendant argues that his sentence is illegal, that his trial counsel was ineffective, and that his guilty plea was "unknowing and unintelligent and unwilling." The State argues that the appeal should be dismissed as untimely because Defendant "failed to file his notice of appeal within [thirty] days of the court's order," because he "fails to argue that he is entitled to waiver, and because the interests of justice do not support such a waiver." In a reply brief, Defendant acknowledges the State's argument but insists that his notice of appeal was timely "pursuant to the prison mailbox rule" and that his claims are colorable. Specifically, Defendant argues that he put his notice of appeal in the mailbox on "8/1/2025" and that "has the same effect to hand it to the appropriate prison official." He further explains the process of how mail travels through the prison and to this Court. He claims the process "normally take[s] 2-4 days" for the mail to leave the prison and that

“[a]ny rational trier of fact would agree [based on the timing] . . . [he] placed the notice of appeal in [the prison mailbox in a] timely manner before the deadline because [this Court] received it and filed it on 8/6/2025.”

We note, as pointed out by the State, Defendant’s notice of appeal was untimely. Tennessee Rule of Appellate Procedure 4(a) states that the notice of appeal “shall be filed with the clerk of the appellate court within 30 days after the date of entry of the judgment appealed from[.]” Waiver is not automatic, and the appealing party bears the responsibility to demonstrate that the interest of justice merits waiver of an untimely notice of appeal. *State v. Manning*, No. E2022-01715-CCA-R3-CD, 2023 WL 7439203, at *3 (Tenn. Crim. App. Nov. 9, 2023), *perm. app. denied* (Tenn. May 16, 2024) (citations omitted). For this Court to evaluate whether “waiver is appropriate, [we] will consider the nature of the issues presented for review, the reasons for and the length of the delay in seeking relief, and any other relevant factors presented in the particular case.” *State v. Rockwell*, 280 S.W.3d 212, 214 (Tenn. Crim. App. 2007) (citation omitted). Other relevant factors include an appellant’s failure to acknowledge the late filing and either affirmatively request a waiver of the timely filing requirement or respond to the State’s brief raising the untimely filing as an issue. *Manning*, 2023 WL 7439203, at *5 (citing *Rockwell*, 280 S.W.3d at 214).

Here, the trial court entered its order denying Defendant’s Rule 36.1 motion on July 3, 2025, and Defendant’s notice of appeal was file-stamped by this Court on August 6, 2025. When pointed out by the State that the notice of appeal was untimely, Defendant explained in his reply brief that he timely delivered his notice of appeal to prison authorities. While the notice of appeal Defendant mailed to the trial court clerk is not file-stamped by prison authorities, Defendant’s certificate of service indicated that it was “mailed postage prepaid” on August 1, 2025. The appealing party “bears the responsibility to properly perfect his [or her] appeal or to demonstrate that the ‘interest[] of justice’ merit[s] waiver of an untimely filed notice of appeal.” *State v. Thomas*, No. W2022-00109-CCA-R3-CD, 2023 WL 328337, at *3 (Tenn. Crim. App. Jan. 20, 2023), *perm. app. denied* (Tenn. June 7, 2023); Tenn. R. App. P. 4(a).

We recognize “[i]f this [C]ourt were to summarily grant a waiver whenever confronted with untimely notices, the thirty-day requirement of Tennessee Rule of Appellate Procedure 4(a) would be rendered a legal fiction.” *Rockwell*, 280 S.W.3d at 214. Defendant’s reply brief addresses the timeliness of the notice of appeal as raised by the State, and he referenced the declaration he filed prior to the completion of the briefing process. Moreover, the delay, if any, in filing the notice of appeal was brief. Therefore, we will waive the timely filing of the notice of appeal in the interest of justice.

Whether a motion states a colorable claim for correction of an illegal sentence under Rule 36.1 is a question of law calling for de novo review. *State v. Wooden*, 478 S.W.3d

585, 589 (Tenn. 2015) (citing *Summers v. State*, 212 S.W.3d 251, 255 (Tenn. 2007)). Rule 36.1(a)(1) provides that the petitioner “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.” A sentence is illegal if it is not authorized by the applicable statutes or directly contravenes an applicable statute. Tenn. R. Crim. P. 36.1(a)(2). If, after reviewing the motion, any response, and, if necessary, the underlying record, the trial court determines that the motion fails to state a colorable claim, it shall summarily deny the motion. Tenn. R. Crim. P. 36.1(b)(2). If the motion states a colorable claim that the unexpired sentence is illegal, the trial court shall determine whether a hearing is necessary. Tenn. R. Crim. P. 36.1(b)(3). If a hearing is necessary and the defendant is indigent and not already represented by counsel, the trial court shall appoint counsel. *Id.* 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.” *Wooden*, 478 S.W.3d at 593. “The movant must attach to the motion a copy of each judgment order at issue and may attach other relevant documents.” Tenn. R. Crim. P. 36.1(a)(1).

As for Defendant’s issue on appeal, our Supreme Court has observed that “few sentencing errors render sentences illegal.” *Wooden*, 478 S.W.3d at 595. Only “fatal errors” render a sentence illegal. *State v. Reid*, 620 S.W.3d 685, 689 (Tenn. 2021). As it explained, fatal errors can 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.” *Wooden*, 478 S.W.3d at 595. This Court has repeatedly held that errors in determining offender classification do not render a sentence illegal and do not provide a basis for relief under Rule 36.1. *See, e.g., State v. Wiggins*, No. W2024-00035-CCA-R3-CD, 2024 WL 3549205, at *2 (Tenn. Crim. App. July 26, 2024) (“The range classification issue raised by the Defendant is an appealable error that is not cognizable in a Rule 36.1 motion.”), *no perm. app. filed*; *State v. Bledsoe*, No. W2023-00730-CCA-R3-CD, 2024 WL 322117, at *2 (Tenn. Crim. App. Jan. 29, 2024) (rejecting challenge to Range III classification as basis for an illegal sentence under 36.1), *perm. app. denied* (Tenn. June 21, 2024); *State v. Morris*, No. M2017-01229-CCA-R3-CD, 2017 WL 6375952, at *2 (Tenn. Crim. App. Dec. 13, 2017), *no perm. app. filed*. Moreover, Defendant’s arguments that his counsel was ineffective and his guilty plea was unknowing and involuntary are also not colorable claims. *State v. Prink*, No. W2020-01271-CCA-R3-CD, 2022 WL 110802, at *4 (Tenn. Crim. App. Jan. 12, 2022) (“The Defendant also claims that he received ineffective assistance of counsel, which resulted in his pleas not being knowing and voluntary. Ineffective assistance of counsel claims do not render a defendant’s sentence illegal, and thus, the Defendant did not state a colorable claim under Rule 36.1. The appropriate remedy for ineffective assistance of counsel claims is through the Post-Conviction Procedure Act.” (citing *State v. Territo*, No. M2016-00548-CCA-R3-CD, 2017 WL

2984281, at *2 (Tenn. Crim. App. July 13, 2017))), *perm. app. denied* (Tenn. June 9, 2022). Consequently, we affirm the judgment of the trial court.

Conclusion

For the foregoing reasons, the judgment of the trial court is affirmed.

s/Timothy L. Easter

TIMOTHY L. EASTER, JUDGE