

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs August 4, 2026

FILED

09/03/2026

Clerk of the
Appellate Courts

DEMARCUS KEYON COLE v. JULIAN WISER, SHERIFF

Appeal from the Circuit Court for Madison County
No. C-25-260 Kyle C. Atkins, Judge

No. W2025-01673-CCA-R3-HC

The Petitioner, Demarcus Keyon Cole, filed a petition for a writ of habeas corpus in the Circuit Court for Madison County, which the habeas corpus court summarily dismissed as deficient. The Petitioner argues on appeal that the habeas corpus court erred by failing to appoint counsel and failing to allow him to amend the petition. Because he was not entitled to the appointment of counsel or an evidentiary hearing on his deficient petition, the habeas corpus court did not err in summarily dismissing it. We affirm.

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

STEVEN W. SWORD, J., delivered the opinion of the court, in which JOHN W. CAMPBELL, SR., and STACY L. STREET, JJ., joined.

Demarcus Keyon Cole, Wartburg, Tennessee, Pro Se.

Jonathan Skrmetti, Attorney General and Reporter; Benjamin L. Barker, Assistant Attorney General; and Jody S. Pickens, District Attorney General, for the appellee, State of Tennessee.

OPINION

I. FACTUAL AND PROCEDURAL HISTORY

The Petitioner was convicted by a Madison County jury of first degree felony murder and especially aggravated robbery in 2013 and was sentenced to life plus twenty years' incarceration. *State v. Cole*, No. W2013-02850-CCA-R3-CD, 2014 WL 7269813, at *1 (Tenn. Crim. App. Dec. 22, 2014), *perm. app. denied* (Tenn. May 18, 2015). Since

then, he has pursued numerous unsuccessful post-conviction challenges in both state and federal courts. *See Cole v. State*, No. W2015-01901-CCA-R3-CD, 2016 WL 2859196, at *1 (Tenn. Crim. App. May 11, 2016) (denial of petition for post-conviction relief), *perm. app. denied* (Tenn. Sep. 26, 2016); *Cole v. Myers*, No. 1:17-cv-01075-STA-jay, 2020 WL 1988256, at *1 (W.D. Tenn. Apr. 27, 2020) (denial of federal petition for habeas corpus relief), *cert. of appealability denied*, No. 20-5544, 2020 WL 6790960 (6th Cir. Oct. 7, 2020), *cert. denied*, 141 S. Ct. 1706 (2021); *Cole v. State*, No. W2023-00517-CCA-R3-ECN, 2023 WL 8947153, at *1, *7 (Tenn. Crim. App. Dec. 28, 2023) (dismissal of petition for writ of error coram nobis), *perm. app. denied* (Tenn. July 18, 2024); *Cole v. State*, No. W2024-00697-CCA-R3-ECN, 2025 WL 884073, at *1 (Tenn. Crim. App. March 21, 2025) (summary dismissal of second petition for writ of error coram nobis), *perm. app. denied* (Tenn. Aug. 7, 2025); *Cole v. State*, No. W2024-01276-CCA-R3-ECN, 2025 WL 1392200, at *1 (Tenn. Crim. App. May 14, 2025) (denial of third and fourth petitions for writ of error coram nobis), *no perm. app. filed*. The Petitioner also filed a petition for writ of habeas corpus in Trousdale County in 2025, which was disposed of by the habeas corpus court there.¹

The Petitioner filed the pro se petition for writ of habeas corpus relief at issue in this case on August 22, 2025. His sole claim in his petition was that the trial court lacked jurisdiction to enter judgment against him because his indictment was amended before trial by changing the predicate offense supporting first degree felony murder.² The Petitioner admitted that the August 2025 petition was his second petition for the writ of habeas corpus and attached a single “Petition for Writ of Habeas Corpus” filed in Trousdale County on June 2, 2025, to the petition. The attached June 2025 petition also alleged that the trial court lacked jurisdiction to enter judgment due to defects in the indictment, specifically that the indictment alleged “attempt to perpetrate robbery” as the predicate offense to felony murder; thus, the Petitioner alleged that the trial court lacked jurisdiction to enter judgment for first degree felony murder based on robbery as the predicate offense. The Trousdale County habeas corpus court summarily dismissed the June 2025 petition on August 1, 2025. The Petitioner did not appeal that order.

Additionally, the current petition argued that the Petitioner was being illegally restrained by Sheriff Wiser in Jackson. The Petitioner listed his address on the petition as

¹ We note that the habeas corpus court found that the Petitioner filed a second petition for habeas corpus relief in Trousdale County in 2025. However, the second petition is not in the record.

² Count 2 of the indictment charged the Petitioner with first degree felony murder during the attempt to perpetrate robbery. The record from the trial reflects that the State moved to amend this count to allege first degree felony murder in the perpetration of robbery. The Petitioner consented to the amendment after consulting with counsel.

515 South Liberty, Jackson, Tennessee, which is the address of the Madison County Jail. However, the petition was notarized in Trousdale County.

The State filed a written response to the petition seeking summary dismissal on September 25, 2025, arguing: 1) that the Petitioner had sued the wrong defendant by incorrectly naming the Madison County Sheriff as the person by whom he was restrained when he was actually housed in a Tennessee Department of Correction facility in Trousdale County, 2) that the Petitioner failed to include a copy of an additional previously filed Trousdale County petition for writ of habeas corpus and failed to make any reference to this missing petition, and 3) that the petition failed to state a cognizable claim for habeas corpus relief. The habeas corpus court entered an order dismissing the petition on September 29, 2025, adopting the State's arguments. This timely appeal followed.

II. ANALYSIS

The Petitioner contends on appeal that the habeas corpus court erred by summarily dismissing his petition. He concedes that his petition was deficient.³ However, he argues that the habeas corpus court erred by failing to appoint counsel to represent him or to allow him to amend his petition, presumably so that it would be procedurally compliant and state a cognizable claim. The State responds that the Petitioner failed to request the appointment of counsel or permission to amend his petition in the habeas corpus court, so the Petitioner's claims are waived, and that regardless, such relief was not required prior to summary dismissal. However, we note that in the conclusion section of his petition, the Petitioner did request the appointment of counsel. In all other respects, we agree with the State.

The right to petition for habeas corpus relief is guaranteed by the Tennessee Constitution's provision that "the privilege of the writ of Habeas Corpus shall not be suspended, unless when in case of rebellion or invasion, the General Assembly shall declare the public safety requires it." Tenn. Const. art. I, § 15; *see also* Tenn. Code Ann. §§ 29-21-101 *et seq.* (setting forth the procedural requirements and grounds for habeas corpus relief). Whether to grant habeas corpus relief is a question of law; accordingly, we review the habeas corpus court's disposition of a petition for writ of habeas corpus de novo with no presumption of correctness. *Faulkner v. State*, 226 S.W.3d 358, 361 (Tenn. 2007).

Habeas corpus relief is available to "[a]ny person imprisoned or restrained of liberty, under any pretense whatsoever," subject to certain statutory exceptions inapplicable to this case. Tenn. Code Ann. § 29-21-101(a). The purpose of habeas corpus relief is to provide a petitioner with a means of redress for a void judgment. *Taylor v. State*, 995 S.W.2d 78,

³ We note that the Petitioner does not delineate in what ways his petition was deficient. He does not specifically contest any deficiency claimed by the State, including failure to state a cognizable claim.

83 (Tenn. 1999). A void judgment is “one that is facially invalid because the court did not have the statutory authority to render such judgment.” *Summers v. State*, 212 S.W.3d 251, 256 (Tenn. 2007). A petitioner seeking habeas corpus relief must establish either “a lack of jurisdiction for the order of confinement on the face of the judgment or in the record on which the judgment was rendered” or “that he is otherwise entitled to immediate release because of the expiration of his sentence.” *State v. Doane*, 393 S.W.3d 721, 732 (Tenn. Crim. App. 2011) (first citing *State v. Ritchie*, 20 S.W.3d 624, 630 (Tenn. 2000); and then citing *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993)). A petitioner must prove the invalidity of the challenged judgment or the illegality of his or her confinement by a preponderance of the evidence. *Wyatt v. State*, 24 S.W.3d 319, 323 (Tenn. 2000). When a petitioner fails to state a cognizable claim for habeas corpus relief in his or her petition, the habeas corpus court may summarily dismiss the petition. *Yates v. Parker*, 371 S.W.3d 152, 155 (Tenn. 2012); *Hickman v. State*, 153 S.W.3d 16, 20 (Tenn. 2004).

The practices and procedures governing petitions for writ of habeas corpus have been regulated by statute since at least 1858. *Ritchie*, 20 S.W.2d at 629 (citing *Ussery v. Avery*, 432 S.W.2d 656, 657 (Tenn. 1968)). The statutory requirements regarding the proper procedure “are mandatory and must be followed scrupulously.” *Archer*, 851 S.W.2d at 165 (citing *Bateman v. Smith*, 194 S.W.2d 336, 337 (1946)). In adopting the State’s reasoning for dismissing the petition, the habeas corpus court found that the petition wrongfully identified the Sheriff of Madison County as the person by whom he was being restrained, that the petition incorrectly claimed that it was only the second petition for habeas corpus relief, and that the Petitioner failed to include a copy of one of the prior petitions for relief without an explanation for its absence. The record supports the habeas corpus court’s conclusions. When a petition fails to comply with these requirements, as the Petitioner concedes, the habeas corpus court may summarily dismiss the petition without a hearing. *Hickman*, 153 S.W.3d at 21; *see also* Tenn. Code Ann. § 29-21-107(b).

As stated above, the Petitioner argues that the habeas corpus court erred in failing to appoint counsel or allowing him to amend the petition prior to the summary dismissal. However, the habeas corpus court was not required to do either in this case. “A trial court may dismiss a habeas corpus petition without a hearing if the petition fails to establish that the challenged judgment is void.” *Hogan v. Mills*, 168 S.W.3d 753, 755 (Tenn. 2005); *see also* Tenn. Code Ann. § 29-21-109 (“If, from the showing of the petitioner, the plaintiff would not be entitled to any relief, the writ may be refused[.]”). “In all proceedings for the writ of habeas corpus . . . , the court having jurisdiction of those matters shall determine the question of indigency and appoint counsel, *if necessary*[.]” Tenn. Code Ann. § 40-14-204 (emphasis added). Our supreme court has determined that appointment of counsel is not necessary in a habeas corpus proceeding when the petitioner fails to provide an adequate record for summary review, even if the petition states a cognizable claim. *Summers*, 212 S.W. 3d at 261. Here, the Petitioner failed to provide the full record of his

prior habeas corpus proceedings, failed to file the petition in the proper court, failed to properly identify by whom and where he was being detained, and, most importantly, failed to state a cognizable habeas corpus claim. *See* Tenn. Code Ann. § 29-21-107(b). Thus, the habeas corpus court did not err in summarily dismissing the petition without appointing counsel.

Nor was the habeas corpus court required to permit the Petitioner to amend his petition before summary dismissal. *See State ex rel. Hathaway v. Henderson*, 432 S.W.2d 503, 506 (Tenn. Crim. App. 1968) (“The matter of allowing or disallowing amendments is within the discretion of the court to whom they are submitted, and the judgment of the court will not be overruled by appellate courts, except in those cases where this discretion has been abused.”). The Petitioner did not request that the habeas corpus court grant him an opportunity to amend the petition either before or after the habeas corpus court summarily dismissed it. Our basic rules of appellate procedure require that issues be presented to the trial court first to preserve them for appellate review. *See* Tenn. R. App. P. 36(a) (“Nothing in this rule shall be construed as requiring relief be granted to a party responsible for an error or who failed to take whatever action was reasonably available to prevent or nullify the harmful effect of an error.”); *see also State v. Bristol*, 654 S.W.3d 917, 925 (Tenn. 2022) (“It has long been the general rule that questions not raised in the trial court will not be entertained on appeal.”); *State v. Rowland*, 520 S.W.3d 542, 545 (Tenn. 2017) (“Generally, issues raised for the first time on appeal are waived.”). By requiring the parties to preserve their claims by fully litigating them below, the rule “may obviate altogether the need for appellate review.” *State v. Minor*, 546 S.W.3d 59, 65 (Tenn. 2018) (citing *State v. Jordan*, 325 S.W.3d 1, 57-58 (Tenn. 2010)). Therefore, the Petitioner has waived this issue.

Waiver notwithstanding, we hold that the habeas corpus court did not abuse its discretion by summarily dismissing the procedurally and substantively deficient petition without affording the Petitioner an opportunity to amend it. The Petitioner named Sheriff Wiser as the respondent in his petition. However, the record indicates that the Petitioner was not being held by the Sheriff in Madison County, but rather by the Department of Correction in Trousdale County. Furthermore, as discussed below, the petition did not state a cognizable claim. Thus, the habeas corpus court did not err in dismissing the petition without allowing the Petitioner an opportunity to amend it.

Significantly, the Petitioner failed to state a cognizable claim for habeas corpus relief in his petition. The indictment indicates that the Petitioner was charged with first degree felony murder, pursuant to Tennessee Code Annotated section 39-13-202(a)(2). The judgment form indicates that the Petitioner was convicted of first degree felony murder pursuant to the same code section. There is nothing on the face of the judgment or the record supporting the judgment to indicate that it is invalid. The Petitioner states in his

petition that he agreed to amend the indicted predicate offense from attempted robbery to robbery. The trial record clearly reflects that the Petitioner gave his consent in open court on the record. An indictment may be amended by oral motion with the consent of a defendant. *See* Tenn. R. Crim. P. 7(b); *State v. Stokes*, 24 S.W. 3d 303, 306-307 (Tenn. 2000) (“[A]n indictment may be amended pursuant to Rule 7(b) where an oral or written motion to amend the indictment is made and where the defendant’s oral or written consent to the motion is clear from the record.”). Thus, the Petitioner defeats his own argument on appeal with the words of his petition,⁴ and he is not entitled to relief.

III. CONCLUSION

Following our review of the record and based upon the foregoing analysis, the judgment of the habeas corpus court is affirmed.

S/ *STEVEN W. SWORD*
STEVEN W. SWORD, JUDGE

⁴ Even assuming that the Petitioner had not agreed to amend the indictment, the judgment would be merely voidable, not void. *See State v. Yoreck*, 133 S.W.3d 606, 612 (Tenn. 2004). A habeas corpus petition may only “successfully contest a void, as opposed to voidable, judgments.” *Taylor v. State*, 955 S.W.2d 78, 83 (Tenn. 1999). “A voidable conviction or sentence is one which is facially valid and requires the introduction of proof beyond the face of the record or judgment to establish its invalidity.” *Id.* (first citing *Dykes v. Compton*, 978 S.W.2d 528, 529 (Tenn. 1998); and then citing *Archer*, 851 S.W.2d at 161–64.).