

SUPREME COURT OF ARKANSAS

No. CR 11-472

ROBERT COLEMAN
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered July 27, 2011

APPELLANT'S PRO SE MOTION
FOR EXTENSION OF TIME TO FILE
BRIEF [ARKANSAS COUNTY
CIRCUIT COURT, NORTHERN
DISTRICT, CR 2008-216, CR 2008-
217, HON. DAVID G. HENRY,
JUDGE]

APPEAL DISMISSED; MOTION
MOOT.

PER CURIAM

In 2009, appellant Robert Coleman entered a plea of guilty or nolo contendere to two counts of rape and one count of sexual assault in the second degree in the Arkansas County Circuit Court, Northern District. He was sentenced to an aggregate term of 240 months' imprisonment.

In 2011, appellant filed in the trial court a petition for writ of habeas corpus in which he alleged that the allegations against him were not true. He argued that the State failed to prove forcible compulsion to sustain the rape judgments, that he was charged on circumstantial evidence, and that he was not afforded a DNA test to prove his innocence. The petition was denied, and appellant lodged an appeal in this court. Now before us is appellant's motion for extension of time to file his brief-in-chief.

We need not address the merits of the motion because it is clear from the record that appellant could not prevail on appeal. Accordingly, the appeal is dismissed, and the motion is moot. An appeal from an order that denied a petition for postconviction relief, including a petition for writ of habeas corpus, will not be permitted to go forward where it is clear that the appellant could not prevail. *Chappell v. Hobbs*, 2011 Ark. 220 (per curiam); *Anderson v. State*, 2011 Ark. 35 (per curiam); *McCullough v. State*, 2010 Ark. 394 (per curiam); *Moore v. Hobbs*, 2010 Ark. 380 (per curiam); *Washington v. Norris*, 2010 Ark. 104 (per curiam); *Edwards v. State*, 2010 Ark. 85 (per curiam); *Pineda v. Norris*, 2009 Ark. 471 (per curiam).

Appellant failed to demonstrate in his petition that the writ was warranted. A petitioner who seeks a writ of habeas corpus and alleges actual innocence must proceed in the trial court in accordance with Act 1780 of 2001 Acts of Arkansas, codified as Arkansas Code Annotated sections 16-112-201 to -208 (Repl. 2006). Ark. Code Ann. § 16-112-103(a)(2). Act 1780 provides that a writ of habeas corpus can issue based on new scientific evidence proving a person actually innocent of the offense or offenses for which he or she was convicted. See Ark. Code Ann. § 16-112-103(a)(1) and §§ 16-112-201 to -208; see also *Echols v. State*, 350 Ark. 42, 84 S.W.3d 424 (2002) (per curiam) (decision under prior law). It is a requirement of the statute that the “identity of the perpetrator was at issue during the investigation or prosecution of the offense being challenged.” § 16-112-202(7).

When a defendant enters a plea of guilty, the guilty plea is the trial. *Crockett v. State*, 282 Ark. 582, 669 S.W.2d 896 (1984); *Irons v. State*, 267 Ark. 469, 591 S.W.2d 650 (1980).

In entering his plea of guilty or nolo contendere, appellant admitted that he committed the offenses. *See Curtis v. State*, 255 Ark. 428, 500 S.W.2d 767 (1973) (citing *McCarthy v. United States*, 394 U.S. 459 (1969)). With respect to whether his identity was in question during the investigation or prosecution of the offense, appellant contended in his petition that forcible compulsion was not proven in his case and that there was only circumstantial evidence against him. The remainder of the petition was largely a recitation of case law associated with scientific testing in rape cases, definitions of legal terms, and accounts of judicial decisions rendered in cases where the defendant was found to have been convicted without sufficient evidence. None of the material that appellant cited was linked by appellant in any way to the investigation and prosecution in his particular case, and he failed to meet his burden of establishing that his identity was in question at any time during the investigation and prosecution. Moreover, appellant's assertion that there was no forcible compulsion suggests that the victim knew him. If so, then appellant's identity was not at issue for the purposes of Act 1780 because the accused in those circumstances is the only possible rapist, and the question is merely whether he committed the crime. *See Strong v. State*, 2010 Ark. 181, 372 S.W.3d 758 (per curiam).

Appellant's claims that the evidence was insufficient to sustain the judgments because there was no demonstration of forcible compulsion and his allegation that the evidence against him was circumstantial were matters to be settled in the trial court before appellant opted to enter his pleas. The grounds are not grounds for habeas relief. *See Daniels v. Hobbs*, 2011 Ark.

Cite as 2011 Ark. 308

192 (per curiam); *see also Tryon v. Hobbs*, 2011 Ark.76 (per curiam); *Hill v. Norris*, 2010 Ark.
287 (per curiam).

Appeal dismissed; motion moot.