

SUPREME COURT OF ARKANSAS

No. CR 11-682

ROBERT LEE JOHNSON, JR.
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered October 27, 2011

PRO SE MOTION FOR EXTENSION
OF TIME TO FILE APPELLANT'S
BRIEF [PULASKI COUNTY CIRCUIT
COURT, CR 2007-660, HON. J. LEON
JOHNSON, JUDGE]

APPEAL DISMISSED; MOTION
MOOT.

PER CURIAM

In 2008, appellant Robert Lee Johnson, Jr., entered in the Pulaski County Circuit Court a plea of guilty to multiple felony offenses in CR 2007-660. He was sentenced as a habitual offender to 120 months' imprisonment.

On January 20, 2011, appellant filed in the trial court a pro se petition to correct an illegal sentence pursuant to Arkansas Code Annotated section 16-90-111 (Repl. 2006). The petition was denied, and appellant lodged an appeal in this court from the order.¹ He now seeks an extension of time to file his brief-in-chief.

We need not consider the motion because it is clear that the record is deficient. This court will not permit an appeal from an order that denied a petition for postconviction relief to go forward where it is clear that the appellant could not prevail. *Clemons v. State*, 2011 Ark. 345

¹The order also refers to a petition to correct a clerical mistake filed by appellant. That petition is not contained in the record lodged in this appeal.



Cite as 2011 Ark. 455

(per curiam); *Gilcrease v. State*, 2011 Ark. 108 (per curiam); *Wormley v. State*, 2011 Ark. 107 (per curiam); *Delamar v. State*, 2011 Ark. 87(per curiam); *Morgan v. State*, 2010 Ark. 504 (per curiam); *Goldsmith v. State*, 2010 Ark. 158 (per curiam); *Watkins v. State*, 2010 Ark. 156, 362 S.W.3d 910 (per curiam); *Meraz v. State*, 2010 Ark. 121 (per curiam); *Smith v. State*, 367 Ark. 611, 242 S.W.3d 253 (2006) (per curiam).

Appellant alleged in his petition that his sentence was illegal because he was convicted of a Class Y felony, but the information did not charge him with a Class Y felony. Appellant did not include in the record lodged in this appeal a copy of the information, making the record deficient. The burden of bringing up a record sufficient to demonstrate error is on the appellant. *Pitts v. State*, 2011 Ark. 322 (per curiam); *Mitchael v. State*, 2010 Ark. 379 (per curiam). As the record is not sufficient to allow this court to assess the central issue raised by appellant, he could not prevail on appeal.

Appeal dismissed; motion moot.