Cite as 2012 Ark. 99

SUPREME COURT OF ARKANSAS

No. CR-11-1068

COREY TURNER

APPELLANT

v.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered March 1, 2012

PRO SE MOTIONS REQUESTING RECORDS AND FOR EXTENSION OF TIME TO FILE BRIEF [CLARK COUNTY CIRCUIT COURT, NO. CR 2009-56, HON. ROBERT McCALLUM, JUDGE]

APPEAL DISMISSED; MOTIONS MOOT.

PER CURIAM

In 2011, appellant Corey Turner filed a petition and amended petition under Arkansas Code Annotated section 16-90-111 (Supp. 2011) in the Clark County Circuit Court to correct a sentence. The petitions sought to modify a 2010 judgment reflecting appellant's conviction, by way of an entry of a negotiated guilty plea in that court, on charges of delivery of hydrocodone and first-degree endangering the welfare of a minor. The trial court denied both the petition and amended petition, and appellant lodged an appeal of the order in this court. Appellant has now filed two motions that request a copy of the record and seek an extension of time in which to file appellant's brief. Because appellant cannot prevail, we dismiss the appeal, and the motions are moot.

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. *Velcoff v. State*, 2011 Ark. 267 (per curiam). In this case, it is clear that appellant did not state facts in his petition or amended petition to present a viable claim of postconviction relief under the statute.

Appellant's claims as set out in the petition and amended petition are not completely clear, but both pleadings do assert that appellant's sentence on the delivery charge was imposed under the wrong provision in Arkansas Code Annotated section 5-64-401 (Repl. 2005), and that is the basis on which appellant would have the court correct the sentence. Appellant appears to allege that the hydrocodone that he admitted to delivering should have been a Schedule III drug for sentencing under section 5-64-401(a)(2)(A)(i), rather than a Schedule I drug for sentencing under section 5-64-401(a)(1)(A)(i).

To the extent that a claim under section 16-90-111 conflicts with the time limitations for postconviction relief on a petition under Arkansas Rule of Criminal Procedure 37.1 (2011), the statute has been superseded. *Rudrud v. State*, 2010 Ark. 439 (per curiam). A petition that seeks postconviction relief cognizable under Rule 37.1 is governed by that rule regardless of the label placed on it by a petitioner. *Gonder v. State*, 2011 Ark. 248, 382 S.W.3d 684 (per curiam). To the extent that appellant's claims were cognizable under Rule 37.1, his request for relief, filed more than a year after the judgment was entered, was not timely. Ark. R. Crim. P. 37.2(c) (2010); *see also Redfeather v. State*, 2010 Ark. 201 (per curiam) (a petitioner who enters a guilty plea is required to seek relief under Rule 37.1 within ninety days from the date that the judgment was entered).

The trial court in this case did not treat the petition as one for postconviction relief under Rule 37.1. The claim that appellant stated in the petition and amended petition concerning the classification of the drug was one that alleged an invalid sentence and raised an issue concerning the facial invalidity of the judgment. With that claim, appellant alleged an illegal sentence of the type that is a jurisdictional question and that may be raised outside of a Rule 37.1 petition.[1] The

[1]Appellant also included in the petitions some allegations concerning a probated sentence and its revocation. The only challenged judgment, however, did not include an order of probation;

claim, however, was patently invalid, because the sentence was within the statutory range, even if appellant's contention was correct.

Appellant apparently believes that the trial court sentenced him for a conviction on a Schedule I drug, and he seems to assert that hydrocodone was actually placed on Schedule III as required by Arkansas Code Annotated section 5-64-207. The 120-month sentence imposed for that charge as noted on the judgment, however, fell within the permitted length for a sentence on a Schedule III drug that was set forth in section 5-64-401(a)(2)(A)(i). The sentence imposed for the charge was the minimum allowed under section 5-64-401(a)(1)(A)(i) for a Schedule I drug, but section 5-64-401(a)(2)(A)(i) provided for a sentence of not less than five years nor more than twenty years. Appellant's sentence for the crime was ten years and fell within either sentencing range.

When a petitioner accepted a negotiated plea to a sentence, this court does not look beyond the permitted statutory range of punishment in determining whether the sentence in the judgment was invalid. *Lumley v. State*, 2011 Ark. 265 (per curiam); *see also Peterson v. State*, 317 Ark. 151, 876 S.W.2d 261 (1994) (per curiam) (where petitioner did not contend that the sentences imposed were outside the statutory range, and he contended only that the sentences imposed were illegal because prior convictions used to establish that he was a habitual offender were not valid, the argument was not one sufficient to demonstrate an otherwise valid sentence is illegal

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appellant listed only one case number on his petition. Appellant asserted that the challenged judgement was somehow invalid as a result of the alleged invalidity of a judgment of revocation on a separate sentence that was included in the deal struck as a part of his plea agreement. The basis of the argument was not developed sufficiently to be clear. The claim would not, however, appear to state an issue of facial invalidity of the judgment. *See Burnley v. Norris*, 2011 Ark. 381 (per curiam). Instead, such a claim would challenge the voluntary nature of his plea, and, as a consequence, would be subject to the time limitations in Rule 37.2(c). *See Cook v. Hobbs*, 2011 Ark. 382 (per curiam).

on its face). The only claim in appellant's petition that alleged a facially invalid sentence nevertheless failed to state a claim sufficient to support relief under the statute. The trial court did not err in declining to modify the sentence, and appellant cannot prevail on appeal.

Appeal dismissed; motions moot.