

**SUPREME COURT OF ARKANSAS**

No. CR 12-374

JAMES EDWARD SMITH

APPELLANT

v.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered August 14, 2012

PRO SE MOTION FOR EXTENSION OF BRIEF TIME, PETITION FOR WRIT OF MANDAMUS TO OBTAIN RECORD, AND MOTION FOR RULE ON CIRCUIT CLERK TO OBTAIN RECORD [PULASKI COUNTY CIRCUIT COURT, 60CR 93-120, HON. BARRY SIMS, JUDGE]

APPEAL DISMISSED; MOTIONS AND PETITION MOOT.

**PER CURIAM**

In 1994, appellant James Edward Smith was found guilty of multiple felony offenses. He was sentenced to an aggregate term of forty years' imprisonment. We affirmed. *Smith v. State*, 318 Ark. 142, 883 S.W.2d 837 (1994).

In 1999, appellant filed in the trial court a pro se petition to correct the sentence pursuant to Arkansas Code Annotated section 16-90-111 (Supp. 1997). The petition was denied, and this court affirmed the order. *Smith v. State*, CR 00-1026 (Ark. Jan. 31, 2002) (unpublished per curiam).

On January 9, 2012, appellant again filed a petition to correct his sentence under the statute, Arkansas Code Annotated section 16-90-111 (Supp. 2011). Appellant contended in the petition that the sentence imposed in 1994 was illegal because he was charged by information filed by the prosecuting attorney and not by grand jury indictment as required by the Fifth

Amendment to the Constitution of the United States. The petition was dismissed, and appellant lodged an appeal in this court from the order. He now seeks an extension of time to file his brief-in-chief, a writ of mandamus, and a rule on the circuit clerk to obtain a copy of the record.

We need not consider the motions or petition because it is clear that appellant could not prevail on appeal. 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. *Morgan v. State*, 2012 Ark. 227 (per curiam); *Johnson v. State*, 2011 Ark. 455 (per curiam); *Clemons v. State*, 2011 Ark. 345 (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).

While a claim of a jurisdictional defect based on a defective charging instrument is one that can be raised outside our postconviction rule, Arkansas Criminal Procedure Rule 37.1 (2011), see *Turner v. State*, 2012 Ark. 99 (per curiam), this court has rejected the argument raised by appellant, which is essentially a challenge to the court's jurisdiction. *Ruiz v. State*, 299 Ark. 144, 772 S.W.2d 297 (1989); *Ellingburg v. State*, 254 Ark. 199, 492 S.W.2d 904 (1973). Section 1 of Amendment 21 to the Arkansas Constitution provides that "All offenses heretofore required to be prosecuted by indictment may be prosecuted either by indictment by a grand jury or information filed by the Prosecuting Attorney." The allegation that the charging instrument was invalid in appellant's case was without merit, and he was entitled to no relief under Arkansas

Code Annotated section 16-90-111.

Appeal dismissed; motions and petition moot.

*James Edward Smith*, pro se appellant.

No response.