

**SUPREME COURT OF ARKANSAS**

No. CR13-37

QUENTIN DAVIS

APPELLANT

v.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** May 2, 2013PRO SE APPELLANT'S MOTION TO  
FILE A BELATED BRIEF [PULASKI  
COUNTY CIRCUIT COURT, 60CR  
98-2588, 60CR 98-3590, HON.  
HERBERT T. WRIGHT, JR., JUDGE]APPEAL DISMISSED; MOTION  
MOOT.**PER CURIAM**

In June 1999, appellant Quentin Davis entered a plea of guilty to multiple felony offenses. An aggregate sentence of 564 months' imprisonment was imposed. In June 2012, appellant filed in the trial court a pro se petition to correct an illegal sentence pursuant to Arkansas Code Annotated section 16-90-111 (Supp. 1997). The petition was denied, and appellant lodged an appeal in this court from the order. Appellant did not timely file his brief-in-chief, and he now seeks leave to file a belated brief.

We need not consider the motion 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. *Hickman v. State*, 2012 Ark. 359 (per curiam); see *Coleman v. State*, 2013 Ark. 152 (per curiam).

In the petition, appellant alleged that he was unaware at the time that he entered the guilty plea of the amount of time he would be required to serve before becoming eligible for

parole, a factual basis for the plea was not established at the plea hearing, he was denied his right to be sentenced by a jury, and he was not afforded effective assistance of counsel. He also contended that he was denied due process of law and equal protection of law. Appellant attributed his failure to file a timely petition to withdraw the plea pursuant to Arkansas Rule of Criminal Procedure 37.1 (1996) to his lack of knowledge and the rigors of incarceration. In its order, the trial court held that the petition amounted to an untimely petition for postconviction relief under Rule 37.1 and denied relief.

With respect to appellant's assertion that he was entitled to be sentenced by a jury, the proceeding when appellant entered his plea of guilty was not a bifurcated proceeding wherein the defendant pleads guilty and is then sentenced by a jury. The judge who presided at the plea hearing specifically inquired of appellant as to whether he understood that he was waiving his right to trial by jury. Appellant answered, "Yes, sir." Appellant made no request to be sentenced by a jury and said that the negotiated plea was acceptable. His counsel informed the court at the plea hearing that he had spoken extensively with appellant and appellant's family regarding the terms of the negotiated plea, including the fact that counsel was unable to advise appellant as to the length of his stay in prison. When appellant was asked if he understood all that his attorney had stated, he again replied, "Yes, sir." We cannot say that appellant demonstrated in his petition to correct the sentence that the sentence was illegal or illegally imposed.

Whether the petition was one under Rule 37.1 or under the statute, it was not timely filed, and the trial court did not therefore err in denying it. To the extent that a claim under

section 16-90-111 conflicts with the time limitations for postconviction relief on a petition under Rule 37.1, the statute has been superseded. *Hickman*, 2012 Ark. 359; *Talley v. State*, 2012 Ark. 314 (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. *Holliday v. State*, 2013 Ark. 47 (per curiam). To the extent that appellant's claims were cognizable under Rule 37.1, appellant's request for relief was properly treated as a petition under Rule 37.1 and was subject to the time limitations contained in the rule. *Lambert v. State*, 2012 Ark. 310 (per curiam).

Appellant alleged in the petition that his sentence was illegal, but the grounds stated in the petition were founded on claims of error in the plea proceeding, including allegations of due-process and equal-protection violations and ineffective assistance of counsel. As those claims, as alleged by appellant, were cognizable in a Rule 37.1 petition, the allegations were subject to the time limitations in Arkansas Rule of Criminal Procedure 37.2(c). See *Hickman*, 2012 Ark. 359 (citing *Talley*, 2012 Ark. 314). Rule 37.2(c) requires that, where an appellant entered a plea of guilty, a petition must be filed within ninety days of the date that the judgment was entered-of-record. Ark. R. Crim. P. 37.2(c)(i). Appellant filed his petition far outside the ninety-day period.

To the extent that any of appellant's claims were not cognizable under Rule 37.1, the claims did not allege the type of error required to support a claim of an illegal sentence. See *Lambert*, 2012 Ark. 310. Appellant did not offer any showing that the sentences imposed on him were outside the range allowed by statute. Rather, appellant's claims were assertions that

the sentence was imposed in an illegal manner, not that the imposed sentence was illegal. *See id.* Section 16-90-111(a) indicates that a circuit court may correct a sentence imposed in an illegal manner within the time allowed under the statute for a reduction of sentence, and section 16-90-111(b)(1) requires that an order under the statute that reduces a sentence must be entered within ninety days after the sentence is imposed on a plea of guilty. Ark. Code Ann. § 16-90-111; *see also Reynolds v. State*, 2011 Ark. 5 (per curiam). Appellant's petition was therefore not timely filed under the statute for purposes of any claims that may not have been cognizable under Rule 37.1. Because appellant's petition was not timely filed under either Rule 37.1 or section 16-90-111, the trial court did not err in denying it under those remedies.

Appeal dismissed; motion moot.

*Quentin Davis*, pro se appellant.

No response.