

SUPREME COURT OF ARKANSAS

No. CR-11-976

MICHAEL BRITT HODGES
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE**Opinion Delivered** July 25, 2013APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT, 60CR-
94-1993, HON. LEON JOHNSON,
JUDGEAFFIRMED.**PER CURIAM**

Appellant Michael Britt Hodges appeals an order of the Pulaski County Circuit Court denying his pro se petition to correct an illegal sentence pursuant to Arkansas Code Annotated section 16-90-111 (Supp. 2006). On appeal, appellant asserts that the application of Arkansas's transfer-eligibility statute to his sentence of twenty years' imprisonment for the charge of attempted rape is illegal because the statute did not take effect until after the commission of the crime. We find no error and affirm.

In 1994, the State filed a felony information charging appellant with one count of rape and one count of violation of a minor.¹ The felony information indicated that the crimes for which appellant was charged occurred over periods of time from on or about December 1, 1993, through on or about April 30, 1994, and from on or about January 3, 1994, through on or about March 10, 1994, respectively. Appellant subsequently entered a plea of guilty to the lesser charge of attempted rape and to the charge of violation of a minor. Appellant was

¹An amended felony information was filed on May 10, 1995, adding the appropriate statutory language to Count 2 of the felony information—violation of a minor.

sentenced to concurrent terms of twenty years' imprisonment for the charge of attempted rape and ten years' imprisonment for the charge of violation of a minor.

On December 22, 2010, appellant filed in the circuit court a pro se petition to correct an illegal sentence pursuant to Arkansas Code Annotated section 16-90-111. In his petition, appellant alleged that the application of the transfer-eligibility statute, codified at Arkansas Code Annotated section 12-29-201 (Supp. 1993), to his twenty-year sentence for the charge of attempted rape amounted to an ex-post-facto violation.² Specifically, appellant alleged that section 12-29-201 became effective January 1, 1994; that the commission of the crime “occurred in either 1992 or 1993”; and that, while he could not cite to a specific statute, the parole-eligibility statute in effect at the time of the commission of the crime should be applied to his sentence. Appellant also filed a motion for production of the transcript, in which he alleged that “the testimony given at one of [the] hearings shows that the crime . . . was alleged to have occurred in 1992 or 1993.” The circuit court entered an order denying appellant’s petition from which he now appeals.

Under section 16-90-111, a circuit court may correct an illegal sentence at any time, but it may correct a sentence imposed in an illegal manner only within ninety days of the entry of that sentence. Ark. Code Ann. § 16-90-111(a)–(b). Sentencing in Arkansas is entirely a matter of statute. *State v. Colvin*, 2013 Ark. 203, ___ S.W.3d ___; *Glaze v. State*,

²Section 12-29-201 provides in pertinent part that “meritorious good time will not be applied to reduce the length of a sentence”; rather, it “shall apply to an inmate’s transfer eligibility date.” Ark. Code Ann. § 12-29-201(d)–(e).

2011 Ark. 464, 385 S.W.3d 203. No sentence shall be imposed other than as prescribed by statute. *Maldonado v. State*, 2009 Ark. 432. A void or illegal sentence is one that is illegal on its face. *Lovelace v. State*, 301 Ark. 519, 785 S.W.2d 212 (1990); *Fritts v. State*, 298 Ark. 533, 768 S.W.2d 541 (1989). A sentence is illegal on its face when it exceeds the statutory maximum for the offense for which the defendant was convicted. *Lovelace*, 301 Ark. 519, 785 S.W.2d 212; *Fritts*, 298 Ark. 533, 768 S.W.2d 541. If a sentence is within the limits set by statute, it is legal. *Davis v. State*, 2013 Ark. 189 (per curiam).

Appellant was sentenced to twenty years for the charge of attempted rape, a Class A felony. See Ark. Code Ann. § 5-3-203 (Repl. 1993). That sentence is within the statutory range for its respective classification. See Ark. Code Ann. § 5-4-401 (Repl. 1993). Moreover, appellant did not allege in his petition that the sentence imposed was in excess of the maximum imposed by the statute; rather, appellant's allegations concern the application of section 12-29-201 to his sentence. Thus, it is not evident from the terms of the judgment and commitment order that the sentence is illegal on its face.

At best, appellant's argument in his petition concerns the illegal imposition of a sentence. Section 16-90-111(b)(1) provides that an order modifying a sentence imposed in an illegal manner may be entered within sixty days after the mandate has been issued in affirmance of the judgment or within ninety days after the sentence has been imposed in cases where no appeal is taken. Ark. Code Ann. § 16-90-111(b)(1); *Murphy v. State*, 2013 Ark. 243 (per curiam); *Morgan v. State*, 2012 Ark. 227 (per curiam). Appellant's petition was filed more than fifteen years after the sentence has been entered.

Based on the foregoing, it is evident that appellant's petition was untimely, and it was not error for the circuit court to deny the petition. As the motion for production of the transcript pertained to the petition to correct an illegal sentence, and, as the petition was untimely, appellant was entitled to no relief on the motion. To the extent that appellant's petition could be considered an assertion that the Arkansas Department of Correction misapplied the transfer-eligibility statute to appellant's sentence, section 16-90-111 does not provide a remedy to correct such errors. *See Johnson v. State*, 2012 Ark. 212.

Affirmed.

Michael Britt Hodges, pro se appellant.

Dustin McDaniel, Att'y Gen., by: *Pamela A. Rumpz*, Ass't Att'y Gen., for appellee.