

Cite as 2009 Ark. 377 (unpublished)

ARKANSAS SUPREME COURT

No. 08-1178

JESUS RUIZ ORTEGA
a/k/a JESUS RUIZ
Appellant

v.

TERRY CASS and
GLEENOVER FITZPATRICK
Appellees

Opinion Delivered June 25, 2009

PRO SE APPEAL FROM THE
CIRCUIT COURT OF LINCOLN
COUNTY, LCV-2008-50, HON.
ROBERT H. WYATT, JR., JUDGE

AFFIRMED.

PER CURIAM

In 2008, appellant Jesus Ruiz Ortega, who is also known as Jesus Ruiz, filed a pro se complaint for declaratory judgment and petition for writ of mandamus related to parole eligibility in the circuit court of the county in which he was incarcerated. The circuit court denied the petition, and appellant has lodged a pro se appeal here from the order.

We do not reverse a denial of postconviction relief unless the trial court's findings are clearly erroneous. *Greene v. State*, 356 Ark. 59, 146 S.W.3d 871 (2004). A finding is clearly erroneous when, although there was evidence to support it, the appellate court after reviewing the entire evidence is left with the definite and firm conviction that a mistake has been committed. *Flores v. State*, 350 Ark. 198, 85 S.W.3d 896 (2002).

From the record before us it appears that in 2003 appellant entered a plea of guilty to two criminal charges. He was sentenced to an aggregate term of 600 months' imprisonment, of which the trial court suspended imposition of 300 months' incarceration. On appeal, as well in his complaint for declaratory judgment, appellant contends that the Arkansas



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Department of Correction (“ADC”) has improperly calculated his parole-eligibility date. The entirety of his argument in the complaint for declaratory judgment filed in the trial court was:

According to the Arkansas Department of Correction (Time Computation Card) states AA-001, man. delv. poss. cont. subs., Class “Y” CR-2003-149, 300 mo. with 1/2, and AA-002 fraud, etc. drug paraphernalia, Class “C” 120 months concurrent one[-]third with 149 days jail[-]time credit.

The petitioner disagrees with the ADC calculation of his parole eligibility date where the ADC miscalculated his T.E. [transfer eligibility] date by 8 months from the date of his computation card as Class I-C, which should be June 27, 2009.

Petitioner was sentence[d] to 25 years for the Class “Y” and 10 years for the Class “C,” both to run concurrent for a total of 25 years under 1/2[.]

(Capitalization and punctuation modified.) In denying the petition, the trial court found that appellant was a “third time offender and that the Respondents are properly calculating his parole eligibility.”

On appeal, however, appellant makes a completely different argument containing factual assertions and legal arguments that were not raised in the original complaint. His argument here is that he was incarcerated in another state during a large portion of the time at issue, and he is entitled to credit for being in custody during that time for an unrelated offense.

An appellant cannot change the nature and scope of his argument on appeal, but he is bound by the arguments and objections presented below. *Tester v. State*, 342 Ark. 549, 30 S.W.3d 99 (2000). Here, we will not consider appellant’s new argument for reversal based upon the time he was incarcerated out of state. Appellant’s argument on appeal is not the same argument that he set out in the complaint filed in the trial court.

Affirmed.