

Cite as 2010 Ark. 439

SUPREME COURT OF ARKANSAS

No. CR-10-429

DEBRA J. RUDRUD

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered: November 11, 2010

APPELLANT'S PRO SE MOTION TO FILE BELATED BRIEF AND APPELLEE'S MOTION TO DISMISS APPEAL FOR FAILURE TO FILE BRIEF [CIRCUIT COURT OF BENTON COUNTY, NOS. CR 2007-875, CR 2009-806, CR 2009-1191]

HON. DAVID S. CLINGER, JUDGE

APPEAL DISMISSED; APPELLANT'S MOTION TO FILE BELATED BRIEF AND APPELLEE'S MOTION TO DISMISS APPEAL FOR FAILURE TO FILE BRIEF MOOT.

PER CURIAM

On November 3, 2009, judgment was entered reflecting that appellant Debra J. Rudrud had entered a plea of guilty to accomplice to forgery in the second degree and forgery in the second degree. Her probation was also revoked on a charge of obtaining a controlled substance by fraud. An aggregate term of 180 months' imprisonment was imposed. The judgment also reflected suspended imposition of sentence of an additional 156 months' imprisonment.

On February 9, 2010, appellant filed in the trial court a pro se petition for reduction of sentence pursuant to Arkansas Code Annotated § 16-90-111 (Supp. 2009). The court

denied the petition, and appellant lodged an appeal in this court from the order. Appellant failed to file a brief in the appeal, prompting the appellee State to file a motion on October 1, 2010, to dismiss the appeal. On October 19, 2010, appellant filed a motion to file a belated brief. Those motions are now before us.

We need not consider appellant's motion to file a belated brief because it is clear from the record that appellant's petition for reduction of sentence was not timely filed and was thus subject to dismissal. *State v. King*, 2010 Ark. 428 (per curiam). Accordingly, we dismiss the appeal and hold moot appellant's motion and appellee's motion to dismiss for failure to file a brief.

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. *Robertson v. State*, 2010 Ark. 300, 367 S.W.3d 538 (per curiam); *Redfeather v. State*, 2010 Ark. 201 (per curiam); *Mitchael v. State*, 2009 Ark. 516 (per curiam) (citing *Booth v. State*, 353 Ark. 119, 110 S.W.3d 759 (2003) (per curiam)); *Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (per curiam); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (per curiam).

A trial court is without jurisdiction to modify, amend, or revise a valid sentence once it has been put into execution. *Green v. State*, 2009 Ark. 113, 313 S.W.3d 521 (citing *Gavin v. State*, 354 Ark. 425, 125 S.W.3d 189 (2003)); *Hodge v. State*, 320 Ark. 31, 34, 894 S.W.2d 927, 929 (1995). A sentence is put into execution when the trial court enters a judgment of conviction or a commitment order. *Gates v. State*, 353 Ark. 333, 336, 107 S.W.3d 868, 869 (2003). In appellant's case, the judgment-and-commitment order was entered ninety-eight

days before the petition for reduction of sentence was filed.

Arkansas Code Annotated section 16-90-111 has been superseded to the extent that it conflicts with the time limitations for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1. *Robertson*, 2010 Ark. 300, 367 S.W.3d 538; *Redfeather*, 2010 Ark. 201; *DeLoach v. State*, 2010 Ark. 79 (per curiam) (citing *Womack v. State*, 368 Ark. 341, 245 S.W.3d 154 (2006) (per curiam)). To the extent that appellant's allegations could be construed as alleging that her sentence was illegal or not legally imposed, in accordance with Rule 37.2(c), a claim that a sentence was illegal or imposed in an illegal manner must be raised in a petition filed in the trial court within ninety days of the date that the judgment on a plea of guilty was entered. *See Reed v. State*, 317 Ark. 286, 286 S.W.3d 376 (1994). The time limits set out in Rule 37.2(c) are jurisdictional in nature, and the circuit court may not grant relief on an untimely petition for postconviction relief. *Maxwell v. State*, 298 Ark. 329, 767 S.W.2d 303 (1989).

Appeal dismissed; appellant's motion to file belated brief and appellee's motion to dismiss appeal for failure to file brief moot.