

SUPREME COURT OF ARKANSAS

No. CR 10-707

JOHN JERMAINE SMITH
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered December 2, 2010

PRO SE PETITION FOR WRIT OF
CERTIORARI [PULASKI COUNTY
CIRCUIT COURT, CR 2006-778, HON.
BARRY A. SIMS, JUDGE]

PETITION FOR WRIT OF
CERTIORARI DENIED; APPEAL
DISMISSED.

PER CURIAM

A September 18, 2009 judgment in Pulaski County Circuit Court reflects that appellant John Jermaine Smith entered a negotiated plea of guilty to one count of aggravated robbery and received a sentence of 180 months' imprisonment in the Arkansas Department of Correction.¹ Appellant filed a petition for postconviction relief under Arkansas Rule of Criminal Procedure 37.1 (2010) that was denied. He then lodged an appeal of the order in this court.

Appellant has filed a petition for writ of certiorari in which he requests that we direct the circuit court reporter or other persons to correct "any omissions or errors" in the record. Appellant does not identify any such omissions or errors, however, to correct. The record has been lodged, and it contains copies of most of the documents that were attached to appellant's

¹The judgment indicated the sentence was to be served consecutively with the sentence in another case.

petition for writ of certiorari. The remaining documents that appellant included with his petition have no obvious relevance to an analysis of his request. Because appellant has not shown any defect in the record, we deny the petition for writ of certiorari.

We also dismiss the appeal. An appeal from an order that denied a petition for a postconviction remedy will not be permitted to go forward where it is clear that the appellant could not prevail. *Croft v. State*, 2010 Ark. 83 (per curiam); *Crain v. State*, 2009 Ark. 512 (per curiam). In this case, the parties have filed their briefs, and appellant asserts error as to a single point on appeal. All arguments made below but not raised on appeal are abandoned. *State v. Grisby*, 370 Ark. 66, 257 S.W.3d 104 (2007). It is clear that appellant cannot prevail as to that point.

Where the petitioner entered a guilty plea, the claims cognizable in a petition for postconviction relief are limited to those that allege that the plea was not made voluntarily and intelligently or was entered without effective assistance of counsel. *Shaw v. State*, 2010 Ark. 112 (per curiam). Although appellant alleged in his petition that his plea was not voluntary, he based that claim upon his assertion that counsel failed to advise him concerning the application of a statute that would limit his eligibility for parole. His claim then was one of ineffective assistance of counsel.

We assess the effectiveness of counsel under the standard set forth by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984). *Polivka v. State*, 2010 Ark. 152, 362 S.W.3d 918. A defendant making an ineffective-assistance-of-counsel claim must

show that his or her counsel's performance fell below an objective standard of reasonableness and that this deficient performance prejudiced the defense. *Hampton v. State*, 2010 Ark. 330 (per curiam). In order for a defendant to show that he was specifically prejudiced by counsel's deficient assistance prior to, or during, the entry of the defendant's guilty plea, the defendant must show that a reasonable probability exists that, but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial. *Id.*

Although appellant now states in his brief to this court that he would not have pled guilty if he had been correctly advised concerning his parole eligibility, he did not make that claim in his petition. He only stated in the petition that his decision to enter the plea was based upon his erroneous understanding concerning his parole eligibility. Moreover, the judgment indicates that eight additional charges were nolle prossed as a result of the plea negotiations. Consequently, appellant did not make an adequate showing of prejudice to support the claim of ineffective assistance in the petition.

This court will affirm a denial of postconviction relief where the record conclusively shows that the petition did not state allegations to warrant relief and was without merit. *See Polivka*, 2010 Ark. 152, 362 S.W.3d 918; *Shaw*, 2010 Ark. 112. Because the petition did not state allegations to warrant relief as to the sole claim appellant asserts on appeal, we dismiss the appeal.

Petition for writ of certiorari denied; appeal dismissed.