

Cite as 2010 Ark. 67

**SUPREME COURT OF ARKANSAS**

No. CR 08-1399

RICHARD DAVID HULSEY  
APPELLANT

V.

STATE OF ARKANSAS  
APPELLEE

**Opinion Delivered** February 12, 2010

PRO SE APPEAL FROM THE  
SEBASTIAN COUNTY CIRCUIT  
COURT, FORT SMITH DISTRICT,  
CR 2005-793, HON. J. MICHAEL  
FITZHUGH, JUDGE

AFFIRMED.

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**PER CURIAM**

On September 19, 2005, an amended judgment was entered reflecting that appellant Richard David Hulsey had entered a plea of guilty to residential burglary, possession of drug paraphernalia, possession of a controlled substance—methamphetamine—with intent to deliver, and manufacturing a controlled substance—methamphetamine. An aggregate sentence of ninety-six months' imprisonment was imposed. An additional 144 months' imprisonment was suspended.

On October 7, 2008, more than three years after the judgment had been entered, appellant filed in the trial court a pro se motion for declaratory judgment pursuant to Arkansas Code Annotated § 16-111-101 (Repl. 2006). Appellant contended in the motion that he should not be required by Arkansas Code Annotated § 16-93-611 (Repl. 2006) to serve seventy percent of his sentence for manufacturing methamphetamine before being eligible for



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parole. He argued that the law governing parole eligibility in his case was unclear and unconstitutional. The trial court denied the motion, and appellant brings this appeal.

On appeal, appellant argues that when he entered his plea of guilty in 2005, he was not subject to the requirement that he serve seventy percent of his sentence. He also contends that the seventy-percent provision was *ex post facto* legislation and thus unconstitutional. In addition, he claims that Act 1782 of 2001 was an unconstitutional repeal of the sunset clause of the statutory provision that requires persons convicted of certain offenses to serve seventy percent of the sentence imposed before being eligible for parole. In a related claim, he asserts that Act 1782 violates the prohibition against “bills having two subjects since the legislature could not find the cited code sections in the code, Arkansas Constitution, article 5 § 30.”

With the exception of the general claim that he was not subject to the seventy-percent provision, the arguments were not preserved for appeal. Appellant did not argue in the trial court that the seventy-percent provision was an *ex post facto* application of the provision or that Act 1782 violated a prohibition against a bill having two subjects. As the arguments were not raised below, we will not address them now. This court does not consider an argument raised for the first time on appeal. *Ayers v. State*, 334 Ark. 258, 975 S.W.2d 88 (1998).

In its order, the court relied on *Rowe v. State*, 374 Ark. 19, 285 S.W.3d 614 (2008), and held that it lost jurisdiction to rule on the motion for declaratory judgment when the judgment of conviction was entered in 2005.<sup>1</sup> As the merits of the issues advanced by

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<sup>1</sup>In *Rowe*, the petitioner contended that Act 1782, codified at Arkansas Code Annotated § 16-93-116 (Repl. 2006), was an unconstitutional repeal of the sunset clause of



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appellant in his petition for declaratory judgment, including the claim that the seventy-percent provision should not apply to him, were not addressed below, none of the issues were preserved for appeal. It was incumbent on appellant to obtain a ruling on specific claims in order for the arguments to be heard here. *See Otis v. State*, 364 Ark. 151, 160, 217 S.W.3d 839, 844 (2005); *see also Walker v. State*, 314 Ark. 628, 864 S.W.2d 230 (1993). Even constitutional questions must be raised below and a ruling obtained to be considered on appeal. *See Raymond v. State*, 354 Ark. 157, 118 S.W.3d 567 (2003).

Finally, appellant appears to argue that the question of whether the trial court had jurisdiction in his case is at issue. It is true that questions of subject-matter jurisdiction are always open and cannot be waived. *State v. Boyette*, 362 Ark. 27, 207 S.W.3d 488 (2005). A question of loss of jurisdiction can be raised by either party at any time, and may be raised by a court on its own motion. *Id.* The declaratory-judgment statutes give courts of record the power to declare rights, status, and other legal relations within their respective jurisdictions. *Travelers Indem. Co. v. Olive's Sporting Goods, Inc.*, 297 Ark. 516, 764 S.W.2d 596 (1989). The statutes, however, do not confer subject-matter jurisdiction. *Bryant v. Picado*, 338 Ark. 227, 996 S.W.2d 17 (1999); *UHS of Ark. v. Charter Hosp. of Little Rock, Inc.*, 297 Ark. 8, 759 S.W.2d 204 (1988). Thus, declaratory judgment is procedural, not jurisdictional. *Martin v. Equitable Life Assurance Soc'y of the U.S.*, 344 Ark. 177, 181, 40 S.W.3d 733, 736–37 (2001).

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a statutory provision that required persons convicted of certain offenses to serve seventy percent of their sentences before being eligible for parole. We concluded in that case that petitioner Rowe's request for declaratory relief did not survive the entry of the judgment. *Rowe*, 374 Ark. at 23, 285 S.W.3d at 620.



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Inasmuch as appellant did not preserve any issue raised below for appeal or demonstrate that he was entitled to any relief from this court on the issue of jurisdiction in his criminal case, the trial court's order is affirmed.

Affirmed.

*Richard David Hulsey*, pro se appellant.

*Dustin McDaniel*, Att'y Gen., by: *Laura Shue*, Ass't Att'y Gen., for appellee.