

Cite as 2010 Ark. 71

**SUPREME COURT OF ARKANSAS**

No. 09-1087

EMMETT MICHAEL BRIM  
APPELLANT

V.

LARRY NORRIS  
APPELLEE

**Opinion Delivered** February 12, 2010

PRO SE MOTION FOR EXTENSION  
OF TIME TO FILE BRIEF [CHICOT  
COUNTY CIRCUIT COURT, CV  
2008-143]

APPEAL DISMISSED; MOTION  
MOOT.

**PER CURIAM**

In 2002, appellant Emmett Michael Brim entered a plea of guilty to carnal abuse in the third degree and was sentenced to 144 months' imprisonment. In 2008, appellant, who was incarcerated in Chicot County, filed a pro se petition for writ of habeas corpus in the circuit court in that county. The court denied the petition, and appellant has lodged a pro se appeal here from the order.

Now before us is appellant's pro se motion seeking an extension of time to file his brief-in-chief. As appellant could not prevail on appeal, the appeal is dismissed. The motion for extension of brief time is moot. An appeal from an order that denied a petition for postconviction relief, including a petition for writ of habeas corpus, will not be permitted to go forward where it is clear that the appellant could not prevail. *Alexander/Ryahim v. Norris*, 2009 Ark. 532 (per curiam) (citing *Lukach v. State*, 369 Ark. 475, 255 S.W.3d 832 (2007) (per



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curiam)); *Wingfield v. State*, 2009 Ark. 499 (per curiam); *Pineda v. Norris*, 2009 Ark. 471 (per curiam).

The burden is on the petitioner in a petition for writ of habeas corpus to establish that the trial court lacked jurisdiction or that the commitment was invalid on its face; otherwise, there is no basis for a finding that a writ of habeas corpus should issue. *Alexander/Ryahim*, 2009 Ark. 532, at 2; *Young v. Norris*, 365 Ark. 219, 226 S.W.3d 797 (2006) (per curiam). The petitioner must plead either the facial invalidity of the judgment or the lack of jurisdiction by the trial court and make a “showing by affidavit or other evidence, [of] probable cause to believe” he is illegally detained. *Young*, 365 Ark. at 221, 226 S.W.3d at 798–99; Ark. Code Ann. § 16-112-103(a)(1) (Repl. 2006).

In his petition, appellant contended solely that his sentence was illegal because the statute he was convicted of violating had been repealed by Act 1738 of 2001, effective August 13, 2001, which was prior to the entry of his guilty plea in 2002. Appellant was convicted of third-degree carnal abuse pursuant to Arkansas Code Annotated § 5-14-106 (Repl. 1997), which was repealed in 2001. The judgment of conviction entered in appellant’s case indicated that the offense was committed July 28, 1995, and thereafter. It is a well-established rule that a sentence must be in accordance with the statutes in effect on the date of the crime. *State v. Burnett*, 368 Ark. 625, 249 S.W.3d 141 (2007) (citing *State v. Ross*, 344 Ark. 364, 39 S.W.3d 789 (2001)); see also *Ark. Dep’t of Corr. v. Williams*, 2009 Ark. 523, 357 S.W.3d 867.

Arkansas Code Annotated § 5-1-103(e) (Repl. 1996) provides that when all or part of



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a statute defining a criminal offense is amended or repealed, the statute or part amended or repealed shall remain in force for the purpose of authorizing the prosecution, conviction, and punishment of a person committing an offense under the statute prior to the effective date of the amending or repealing act. Arkansas Code Annotated § 1-2-120 (Repl. 1997) provides that when any criminal or penal statute is repealed, all offenses committed under it while it was in force shall be punished or enforced as if it were in force, notwithstanding the repeal, unless otherwise expressly provided in the repealing statute. Appellant was charged with criminal conduct that occurred in 1995 and after. Thus, Arkansas Code Annotated § 5-14-106 (Repl. 1997) was clearly in effect at the time. Under the provisions of Arkansas Code Annotated § 1-2-120 and § 5-1-103(e), the sexual-misconduct statute remained in effect for the purpose of prosecuting, convicting, and punishing all offenses committed prior to its repeal. Appellant offered nothing to show that he was convicted of an offense committed after August 13, 2001.

Appellant failed to show that the trial court lacked jurisdiction or that the commitment was invalid on its face. Therefore, there was no basis for a finding that a writ of habeas corpus should issue in appellant's case. *See Friend v. Norris*, 364 Ark. 315, 219 S.W.3d 123 (2005) (per curiam).

Appeal dismissed; motion moot.

*Emmett Michael Brim*, pro se appellant.

No response.