

SUPREME COURT OF ARKANSAS

No. 09-1293

JEFFERY EDWARDS
A/K/A JEFFREY EDWARDS
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered February 18, 2010

PRO SE MOTION FOR EXTENSION
OF TIME TO FILE APPELLANT'S
BRIEF [LEE COUNTY CIRCUIT
COURT, NO. CV 2009-162]

HONORABLE RICHARD L.
PROCTOR, JUDGE

APPEAL DISMISSED; MOTION
MOOT.

PER CURIAM

Appellant Jeffery Edwards, who is also known as Jeffrey Edwards, filed a petition for writ of habeas corpus pursuant to Arkansas Code Annotated §§ 16-112-101 to -123 (Repl. 2006) in the county where he was incarcerated at a unit of the Arkansas Department of Correction. In the petition, he raised the claim that, with respect to sentencing after he was convicted of multiple criminal offenses, the trial court “in a void and facially invalid manner” failed to give due consideration to the exercise of its discretion regarding whether to order the sentences imposed against him to be served consecutively or concurrently. The circuit court denied the petition, and appellant has lodged an appeal of the order in this court. He now seeks by pro se motion an extension of time to file his brief-in-chief. Because it is clear that appellant cannot prevail on appeal, we dismiss the appeal. The motion for extension of time is moot.



Cite as 2010 Ark. 85

An appeal of the denial of postconviction relief, including an appeal from an order that denied a petition for writ of habeas corpus, will not be permitted to go forward where it is clear that the appellant could not prevail. *Grissom v. State*, 2009 Ark. 557 (per curiam); *Pineda v. Norris*, 2009 Ark. 471 (per curiam); *Lukach v. State*, 369 Ark. 475, 255 S.W.3d 832 (2007) (per curiam). Here, appellant failed to establish that his petition merited the relief sought.

The burden is on the petitioner in a habeas corpus petition 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 the writ should issue. *Young v. Norris*, 365 Ark. 219, 226 S.W.3d 797 (2006) (per curiam). The petitioner must plead either the facial invalidity or the lack of jurisdiction and make a “showing by affidavit or other evidence, [of] probable cause to believe” that he is illegally detained. *Id.* at 221, 226 S.W.3d at 798–99.

The decision to order multiple sentences served consecutively or concurrently lies solely within the province of the trial judge and is discretionary. See *Maldonado v. State*, 2009 Ark. 432 (citing *Smith v. State*, 354 Ark. 226, 248, 118 S.W.3d 542, 555 (2003)). Appellant here offered nothing to demonstrate that the trial court’s exercise of discretion in itself called into question the jurisdiction of the court or the facial validity of any of the judgments of conviction entered in his criminal cases. Accordingly, appellant stated no ground for a writ of habeas corpus to issue.

Appeal dismissed; motion moot.

Jeffery Edwards, pro se appellant.

No response.