Cite as 2010 Ark. 202

SUPREME COURT OF ARKANSAS

No. 10-134

Opinion Delivered April 29, 2010

MELVIN JEFFERSON
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

PRO SE MOTION FOR EXTENSION OF TIME TO FILE BRIEF [CIRCUIT COURT OF LINCOLN COUNTY, LCV 2009-74, HON. JODI RAINES DENNIS, JUDGE]

APPEAL DISMISSED; MOTION MOOT.

PER CURIAM

In 2004, appellant Melvin Jefferson entered a negotiated plea of guilty to domestic battering in the first degree and two counts of domestic battering in the second degree. An aggregate sentence of 300 months' imprisonment was imposed.

In 2009, appellant, who was incarcerated in Lincoln 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 be successful on appeal, the appeal is dismissed and the motion is moot. An appeal from an order that denied a petition for postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *Washington v. Norris*, 2010 Ark. 104 (per curiam); *Lukach v. State*, 369 Ark. 475, 255 S.W.3d

832 (2007) (per curiam).

As the sole ground for issuance of a writ of habeas corpus, appellant contended that he should not have been sentenced as a habitual offender because that designation was not a part of the plea agreement. He also notes that the judgment does not reflect that he was sentenced as a habitual offender.

Appellant appended to his habeas petition a copy of the Report of Plea Negotiations reflecting that he signed the report accepting the plea agreement before he appeared at the hearing in which the plea was entered. The prospective sentences that were later imposed were labeled, "Range/Habitual." The report reflects that appellant was made aware that the agreement called for sentencing as a habitual offender. The sentence imposed totaling an aggregate of 300 months' imprisonment did not depart from the report bearing appellant's signature. If the judgment and commitment through a clerical error did not reflect that he was sentenced as a habitual offender, the judgment was subject to correction.

Unless a petitioner in a habeas proceeding can show that the trial court lacked jurisdiction or that the commitment was invalid on its face, there is no basis for a finding that a writ of habeas corpus should issue. *Boyle v. State*, 2010 Ark. 98 (per curiam); *Friend v. Norris*, 364 Ark. 315, 219 S.W.3d 123 (2005) (per curiam). The petitioner must plead either facial invalidity or lack of jurisdiction and make a "showing, by affidavit or other evidence, [of] probable cause to believe" that he is illegally detained. Ark. Code Ann. § 16-112-103(a)(1) (Repl. 2006); *Grimes v. State*, 2010 Ark. 97 (per curiam); *Mackey v. Lockhart*,

307 Ark. 321, 819 S.W.2d 702 (1991). In determining whether the denial of a writ of habeas corpus was proper, this court must look for the invalidity only on the face of the judgment. *Key v. Norris*, 2010 Ark. 61 (per curiam).

In the instant matter, appellant could have filed a motion to correct the judgment, or, if it was his contention that he did not get the sentence that he agreed to in the plea negotiations, he could have filed a timely petition for postconviction relief pursuant to Arkansas Criminal Procedure Rule 37.1 (2010). A habeas corpus proceeding does not afford a prisoner an opportunity to retry his case and is not a substitute for a timely petition for postconviction relief. *Washington*, 2010 Ark. 104; *Meny v. Norris*, 340 Ark. 418, 13 S.W.3d 143 (2000) (per curiam).

The claims raised by appellant did not demonstrate that the trial court lacked jurisdiction or that the judgment and commitment was invalid on its face. As a result, he stated no ground to warrant issuance of a writ of habeas corpus.

Appeal dismissed; motion moot.

Melvin Jefferson, pro se appellant.

No response.