Cite as 2010 Ark. 199

SUPREME COURT OF ARKANSAS

No. 08-910

Opinion Delivered April 29, 2010

EDWARD WILLIAM DOSS, JR.
APPELLANT

V.

LARRY NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION
APPELLEE

APPEAL FROM THE CIRCUIT COURT OF HOT SPRING COUNTY
[CV 2006-218]
HON. CHRIS E WILLIAMS, JUDGE

AFFIRMED.

PER CURIAM

In 2003, appellant Edward William Doss, Jr., entered a negotiated plea of guilty to two counts of rape and received an aggregate sentence of 240 months' imprisonment. The judgment indicates that the victim was under the age of eighteen years. Appellant, through counsel, filed a petition for writ of habeas corpus in the circuit court of the county in which he is currently incarcerated. The petition was denied, and counsel has lodged in this court an appeal of the order denying relief.

Appellant raises a single point on appeal, contending that the trial court erred in denying a hearing on the petition because appellant had set forth sufficient facts to support issuance of the writ. Appellant appears to assert that he made a showing of probable cause for illegal detention because the offense dates were outside the statute of limitations provided in

Arkansas Code Annotated § 5-1-109 (Repl. 1997).[1] We do not agree that the facts as alleged by appellant support such a showing.

A hearing is not required if a petition for the writ does not state a basis for the writ to issue. *Henderson v. State*, 2010 Ark. 30 (per curiam). In order to state a basis for the writ, a petitioner must plead either the facial invalidity of the judgment or the lack of jurisdiction by the trial court and make a showing of probable cause to believe that the petitioner is illegally detained. *See Brim v. Norris*, 2010 Ark. 71 (per curiam). Appellant's claim in the petition that the offenses occurred outside the statute of limitations was a claim cognizable in habeas proceedings, as a statute-of-limitations issue implicates jurisdiction to hear the case and cannot be waived. *See Young v. Norris*, 365 Ark. 219, 226 S.W.3d 797 (2006) (per curiam). Even if a cognizable claim is made, however, a showing of probable cause is required to establish a basis for the writ. *See Mackey v. Lockhart*, 307 Ark. 321, 819 S.W.2d 702 (1991).

Appellant's argument on appeal that he made the necessary showing for a hearing, as well as the relevant claim in the petition that the statute of limitations had lapsed, turns on interpretation of the language in section 5-1-109. Appellant contends that the statute of limitations expired on July 21, 2002, or six years after the last date listed on the information as the date of the offenses. Section 5-1-109(b) set a six-year limitation on class Y and class A felonies. Appellant asserts that the circumstances of the case did not fall within the

[1]Appellant does not provide a specific reference to the version of the statute at issue. The applicable statute, however, is that in effect at the time of the alleged offenses. *State v. Hayes*, 366 Ark. 199, 234 S.W.3d 307 (2006).

exception to that limitation listed in section 5-1-109(h) because he alleges that the report filed by the victim was filed prior to the running of the period listed in section 5-1-109(b).

Section 5-1-109(h) provides thus:

> If the period prescribed in subsection (b) has expired, a prosecution may nevertheless be commenced . . . if, when the alleged violation occurred, the offense was committed against a minor, the violation has not previously been reported to a law enforcement agency or prosecuting attorney, and the period prescribed in subsection (b) has not expired since the victim has reached the age of eighteen (18).

Appellant contends that the extension of the statute of limitations is conditioned upon the victim not reporting the violation during the period of time set out in section 5-1-109(b). He argues that the only other construction of the statute would require that the victim not report the offense. We, however, do not find either reading of the statute to be consistent with common sense or the legislature's clear intent.

The basic rule of statutory construction is to give effect to the intent of the legislature. *State v. Owens*, 370 Ark. 421, 260 S.W.3d 288 (2007). Where the language of the statute is plain and unambiguous, we determine legislative intent from the ordinary meaning of the language used. *Id.* Words are given their ordinary and usually accepted meaning in common language, and if the language of the statute is plain and unambiguous and conveys a clear and definite meaning, there is no occasion to resort to rules of statutory interpretation. *Burnette v. State*, 354 Ark. 584, 127 S.W.3d 479 (2003). We will not interpret a statute to yield an absurd result that defies common sense. *Owens*, 370 Ark. at 426, 260 S.W.3d at 292.

A statute's commentary, although not controlling over the statute's clear language, is

a highly persuasive aid to construing that statute. *McGrew v. State*, 338 Ark. 30, 991 S.W.2d 588 (1999). We adhere to the commentary unless it is contrary to the settled policy of the state. *Burnette*, 354 Ark. at 588, 127 S.W.3d at 481. In this case, the commentary serves to eliminate any possible ambiguity in the plain language of the statute.

The 1988 Supplementary Commentary to section 5-1-109 indicates that subsection (h) was added to the statute in order to "extend the statute of limitations for a serious felony such as rape up to six years beyond the 18th birthday of the victim, regardless of the age of the victim at the time of the offense." The same commentary also notes that "subsection (h) does not extend the statute of limitations in cases where the offense is reported to the police but no prosecution takes place—for instance as a result of [the] victim's reluctance to testify against a parent." In light of the commentary, it is clear that the language in section 5-1-109(h) extends the time for initiating prosecution, provided that the victim has not reported the same incident previously. That is, the restriction on the extension of the period requires that the victim may not have reported the incident multiple times; it does not require that the timing of the single report resulting in the prosecution fall outside of the original period of limitation in section 5-1-109(b).[2] To construe the statute as appellant proposes, so that the victim either may not report the violations at all or must wait for the original statutory period to expire, would defy common sense.

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[2]The Arkansas Court of Appeals has recited a similar interpretation in a previous opinion concerning the same provision. *Gardner v. State*, 76 Ark. App. 258, 64 S.W.3d 761 (2001).

Appellant did not contend that the offenses had been reported on a previous occasion and relies upon his allegation that the report was filed prior to July 21, 2002. He does not therefore demonstrate that he made a showing of probable cause to believe that he was illegally detained as was necessary to establish a basis for the writ. The circuit court did not err in denying the petition without a hearing.

Affirmed.

Dana A. Reece, for appellant.

Dustin McDaniel, Att'y Gen., by: *Vada Berger*, Ass't Att'y Gen., for appellee.