

ARKANSAS SUPREME COURT

No. 09-416

MARLON A. PINEDA
Appellant

v.

LARRY NORRIS, ET AL
Appellees

Opinion Delivered October 1, 2009

PRO SE MOTION FOR EXTENSION
OF TIME TO FILE APPELLANT'S
BRIEF [CIRCUIT COURT OF CHICOT
COUNTY, CV 2009-54, HON. ROBERT
BYNUM GIBSON, JR., JUDGE]

APPEAL DISMISSED; MOTION
MOOT.

PER CURIAM

Appellant Marlon A. Pineda, a prisoner incarcerated in the Arkansas Department of Correction, filed a petition for writ of habeas corpus in the circuit court of the county where he is incarcerated. The circuit court denied the petition and appellant lodged an appeal in this court. He has now filed a motion for extension of time in which to file his brief. We dismiss the appeal and the motion is therefore moot.

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. *Lukach v. State*, 369 Ark. 475, 255 S.W.3d 832 (2007) (per curiam). Here, appellant failed to state a claim in his petition that was cognizable in a habeas proceeding.

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 a writ of habeas corpus should issue. *Young v. Norris*, 365 Ark. 219, 226 S.W.3d 797

(2006) (per curiam). Under our statute, a petitioner who does not allege his actual innocence¹ 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. *Id.* at 221, 226 S.W.3d at 798-799; Ark. Code Ann. § 16-112-103(a)(1) (Repl. 2006).

Appellant did not plead either a lack of jurisdiction by the trial court or that the commitment was invalid on its face. Appellant based his grounds for relief upon a claim that he was entitled to a number of days of credit for his incarceration after his arrest that are not reflected in his records with the Arkansas Department of Correction. The copy of the judgment that appellant attached to his petition does not reflect a jail time credit. However, even if the judgment did not reflect a credit to which appellant may have been entitled, the type of error appellant alleges was not sufficient to void the judgment.

A request for jail time credit is a request for modification of a sentence imposed in an illegal manner, not an allegation of an illegal sentence, and as such must be raised in a proceeding pursuant to Arkansas Rule of Criminal Procedure 37.1. *See Cooley v. State*, 322 Ark. 348, 909 S.W.2d 312 (1995). An allegation that the judgment fails to reflect a jail time credit is not a claim cognizable in a petition for writ of habeas corpus. Because appellant did not raise a cognizable claim in his petition, he cannot prevail on appeal.

Appeal dismissed; motion moot.

¹ A petitioner who seeks a writ of habeas corpus and alleges actual innocence must do so in accordance with Act 1780 of 2001 Acts of Arkansas, codified as Arkansas Code Annotated sections 16-112-201 to -208 (Repl. 2006). Ark. Code Ann. § 16-112-103(a)(2) (Repl. 2006).