

SUPREME COURT OF ARKANSAS

No. CR 09-827

BRIAN DWIGHT HIGGINS
Petitioner

v.

HON. RICHARD PROCTOR, CIRCUIT
JUDGE
Respondent

Opinion Delivered October 8, 2009

PRO SE PETITION FOR WRIT OF
MANDAMUS [CIRCUIT COURT OF ST.
FRANCIS COUNTY, CR 94-104, CR 92-
273]

PETITION GRANTED IN PART AND
DENIED IN PART.

PER CURIAM

Two judgments entered on June 19, 2000, reflect that the St. Francis County Circuit Court found petitioner Brian Dwight Higgins guilty of residential burglary and robbery, that petitioner had been on probation at the time of the convictions, and that petitioner was to serve consecutive sentences of 120 months' imprisonment on each of the charges. On March 14, 2005, petitioner filed in the trial court a petition to correct illegal sentences in the two cases. Petitioner now submits a pro se petition for writ of mandamus to this court, seeking to have the trial court enter an order on the record as to the petition filed almost five years ago in circuit court.

In his petition to this court, petitioner alleges that the circuit court held a hearing on the petition filed in 2005, that the then-presiding judge, the Honorable Harvey Yates, provided an oral ruling on the petition granting relief, and that the order reflecting that decision was never entered. Petitioner requests that we direct the respondent, the Honorable Richard Proctor, Circuit Judge, who is Judge Yates's successor, to enter an order dismissing the charges, or, otherwise take specific action that would result

in petitioner's release. We grant the petition to the extent that we direct Judge Proctor to provide a ruling, although we decline petitioner's request that we direct Judge Proctor to take any specific action in that regard.

The purpose of a writ of mandamus is to enforce an established right or to enforce the performance of a duty. *Manila School Dist. No. 15 v. Wagner*, 357 Ark. 20, 159 S.W.3d 285 (2004). A petitioner must show a clear and certain right to the relief sought, and the absence of any other adequate remedy when requesting a writ of mandamus. *Johnson (ex rel. T.J.) v. Hargrove*, 362 Ark. 649, 210 S.W.3d 79 (2005). The writ will not lie to control or review matters of discretion. *Arkansas Democrat-Gazette v. Zimmerman*, 341 Ark. 771, 20 S.W.3d 301 (2000). Here, we hold that petitioner has an established right to receive a ruling on the petition filed in circuit court, but he has not established that he is entitled to any specific ruling.

In his response to the mandamus petition, Judge Proctor does not contend that the petition is not assigned to his court. Respondent asserts that petitioner has failed to produce a record that shows a hearing was held or that Judge Yates provided an oral ruling on the petition. Respondent further asserts that because Judge Yates was alleged to have provided a decision, there is no basis to compel an action already performed. Yet, whether Judge Yates issued an oral order or not, petitioner has not received a ruling on the petition in circuit court. An oral order is not effective until entered of record. *Hewitt v. State*, 362 Ark. 369, 208 S.W.3d 185 (2005) (per curiam).

The petition to correct illegal sentences remains pending, and, despite respondent's assertion to the contrary, as Judge Yates's successor, respondent has a duty to provide a ruling. The court has an obligation to ensure that each matter filed receives a reasonably prompt disposition. *See Cabral v. Keith*, 364 Ark. 456, 220 S.W.3d 683 (2005) (per curiam); *see also Hall v. Simes*, 350 Ark. 194, 85 S.W.3d

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509 (2002) (per curiam); *Urquhart v. Davis*, 341 Ark. 653, 19 S.W.3d 21 (2000) (per curiam). The timely disposition of pleadings filed in a court is vital to the administration of justice. *McCoy v. Phillips*, 357 Ark. 368, 166 S.W.3d 564 (2004) (per curiam). Procedures in any circuit court should be in place to ensure that any order issued is promptly entered and that any pleading not acted upon by the judge to whom it was assigned before the judge leaves office is promptly assigned to his or her successor or another judge in the district. *See id.*

We accordingly grant the petition in part and issue the writ to the extent noted. We direct the respondent to enter an order disposing of the petition to correct illegal sentences within thirty days of the date of this order. While we grant the petition for writ of mandamus to the extent that petitioner requests a ruling on the petition to correct illegal sentences, we leave it to the court's discretion to decide whether any hearing is required and to determine the appropriate disposition of the petition. In the event the court should consider it necessary to hold a hearing or take other evidence that would require additional time in order to render a decision, respondent may, prior to expiration of the time for entry of the order, move for an extension of time in which to comply.

Petition granted in part and denied in part.