

Cite as 2010 Ark. 428

SUPREME COURT OF ARKANSAS

No. CR-09-1294

STATE OF ARKANSAS

APPELLANT

V.

LYNDA KING

APPELLEE

Opinion Delivered November 4, 2010

APPEAL FROM THE CIRCUIT
COURT OF JEFFERSON COUNTY,
CR 2008-324, HON. BERLIN C.
JONES, JUDGE

APPEAL TREATED AS PETITION
FOR WRIT OF CERTIORARI AND
GRANTED.

PER CURIAM

The State brings a direct appeal of orders that were entered in the trial court reducing sentences imposed on appellee Lynda King for criminal convictions on charges of second-degree forgery, theft of property, and attempted theft of property. In the alternative, the State requests the grant of a writ of certiorari to reverse the orders for lack of jurisdiction. For the reasons discussed below, we treat the appeal as a petition for a writ of certiorari and grant the writ.

On March 17, 2009, the appellee entered a guilty plea to 1004 counts of second-degree forgery, 23 misdemeanor counts of theft of property, 46 counts of Class B theft of property, 503 counts of Class C theft of property, and a single count of criminal attempted theft of property. The offenses occurred on various dates beginning in 2001 and ending in 2008. A judgment entered on March 31, 2009, and an amended judgment entered on April

3, 2009, both reflect sentences imposed of 120 months for each felony conviction and 12 months for each misdemeanor conviction. The sentences for the felonies committed within a calendar year were to run consecutively to those within other calendar years so that the aggregate sentence imposed was 960 months.

On June 16, 2009, appellee filed in the trial court a petition for reduction of sentence under Arkansas Code Annotated § 16-90-111 (Supp. 2003). On September 2, 2009, the court entered an order reducing appellee's sentence to thirty-eight years' imprisonment, and the court followed with an order entered on September 25, 2009, that provided that eighteen years of the thirty-eight-year sentence was suspended for a total of twenty years on all offenses. On September 29, 2009, the trial court entered a judgment reflecting the 240-month aggregate sentence.

The State contends that the trial court lost jurisdiction to modify the sentence when the sentence was placed into execution by two judgments in March and April 2009 and that the orders reducing appellee's sentence were therefore void. This court has acknowledged that treating an appeal by the State as a petition for writ of certiorari is an alternative to considering an appeal under Arkansas Rule of Appellate Procedure—Criminal 3 (2010) in situations where the State contends that a court has acted without jurisdiction.¹ *State v.*

¹Appellee contends that a writ of prohibition is the appropriate remedy and that the appellant waived the jurisdictional issue. Even where a writ of prohibition is otherwise appropriate, it is not if there is another remedy available. *See Hobbs v. Reynolds*, 375 Ark. 313, 289 S.W.3d 917 (2008) (per curiam). Questions of subject-matter jurisdiction cannot be waived. *C.H. v. State*, 2010 Ark. 279, 365 S.W.3d 879.

Boyette, 362 Ark. 27, 207 S.W.3d 488 (2005); *see also State v. Rowe*, 374 Ark. 19, 285 S.W.3d 614 (2008). Because the issue in dispute is whether a trial court acted in excess of its authority, it becomes a question of subject-matter jurisdiction that this court may entertain at its discretion, regardless of any concerns relevant to an inquiry under Rule 3. *Boyette*, 362 Ark. 27, 207 S.W.3d 488.

Here, as the State indicates in its brief, the sentences appear to be within the statutory range provided for the applicable classes of offenses, and appellee did not allege that the sentences were either illegal or illegally imposed in her petition under section 16-90-111. Rather, petitioner sought leniency from the court because she contended that the sentence was too harsh in comparison to other similar cases. Because appellee did not raise an allegation that was cognizable as such, appellee's petition, like the claim this court considered in *Reeves v. State*, 339 Ark. 304, 5 S.W.3d 41 (1999), did not present a claim for postconviction relief under Arkansas Rule of Criminal Procedure 37.1 (2010).

The State contends that section 16-90-111 did not provide the trial court with jurisdiction because appellee's claim did not concern an illegal sentence. Even if the statute embraced the claim, the trial court's order did not fall within the restrictions imposed in the statute for a valid order. Section 16-90-111(b)(1) requires that an order under the statute that reduces a sentence must be entered within ninety days after the sentence is imposed or within sixty days after receipt of a mandate affirming the judgment or dismissing an appeal. Ark. Code Ann. § 16-90-111(b)(1). In this case, the order reducing the sentences was not

entered until more than five months after the original judgment was entered. The statute simply is not applicable.

The trial court's authority to grant a motion for reduction in sentence in this situation, therefore, is not apparent. The order reducing appellee's sentences cited no authority other than section 16-90-111. Generally speaking, absent a statute, rule, or available writ, once the circuit court enters a judgment and commitment order, jurisdiction is transferred to the executive branch of our government. *Richie v. State*, 2009 Ark. 602, 357 S.W.3d 909. That executive authority, in the case of a prisoner subject to incarceration in its care, lies with the Arkansas Department of Correction. *See id.* Without an exception as noted, the trial court lacks subject-matter jurisdiction. *See Gavin v. State*, 354 Ark. 425, 125 S.W.3d 189 (2003). We have long held that a trial court loses jurisdiction to modify or amend an original sentence once the sentence is put into execution. *Green v. State*, 2009 Ark. 113, 313 S.W.3d 521.

Because the trial court did not have the authority to act on appellee's motion when it entered the orders reducing appellee's sentence, it lacked jurisdiction to modify appellee's sentence. Accordingly, we grant the writ of certiorari. The trial court's orders reducing appellee's sentences are vacated, and the original judgment remains valid and enforceable.

Appeal treated as petition for writ of certiorari and granted.