ARKANSAS SUPREME COURT

No. 06-1055

NOT DESIGNATED FOR PUBLICATION

TED HAMILTON
Appellant

v.

JAMES BANKS, WARDEN, and LARRY NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION
Appellees

Opinion Delivered **December 7, 2006**

PRO SE MOTIONS FOR APPOINTMENT OF COUNSEL AND FOR DUPLICATION OF APPELLANT'S BRIEF AT PUBLIC EXPENSE [CIRCUIT COURT OF IZARD COUNTY, CV 2006-57, HON. TIMOTHY M. WEAVER, JUDGE]

APPEAL DISMISSED; MOTIONS MOOT.

PER CURIAM

In 2004, Ted Hamilton was sentenced to 180 months' imprisonment for residential burglary in Miller County. Appellant, who remains incarcerated in the Arkansas Department of Correction, filed a petition for writ of *habeas corpus* in Izard County, Arkansas, seeking reinstatement of his transfer to supervision by the Department of Community Correction. The trial court denied the petition. Appellant, proceeding *pro se*, has lodged an appeal in this court from the trial court's order.

Now before us are appellant's *pro se* motions for appointment of counsel and duplication of appellant's brief at public expense. We need not consider these motions as it is apparent that appellant could not prevail in this appeal if it were permitted to go forward. Accordingly, we dismiss the appeal and hold the motions moot. This court has consistently held that 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. *See Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (*per*

curiam); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (*per curiam*).

We do not reverse a denial of postconviction relief unless the trial court's findings are clearly erroneous or clearly against the preponderance of the evidence. *Greene v. State*, 356 Ark. 59, 146 S.W.3d 871 (2004). A finding is clearly erroneous when, although there is evidence to support it, the appellate court after reviewing the entire evidence is left with the definite and firm conviction that a mistake has been committed. *Flores v. State*, 350 Ark. 198, 85 S.W.3d 896 (2002).

Here, while incarcerated in the Cummins Unit of the Arkansas Department of Correction, appellant applied with the Post Prison Transfer Board for early release from his sentence. After initially being denied, appellant sought a hearing and was granted a transfer to supervision by the Department of Community Correction in a Record of Release Consideration dated July 5, 2005, subject to certain conditions. Appellant was eventually transferred to the North Central Unit in Izard County.

Later, in a Record of Release Consideration dated March 6, 2006, the Post Prison Transfer Board rescinded the transfer to the Department of Community Correction. The document indicated that the decision was made after a hearing on August 26, 2005. Appellant filed a petition for writ of *habeas corpus* in Izard County, naming as respondents the warden of the North Central Unit and the director of the Arkansas Department of Correction.[1]

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[1]In his petition, appellant maintained that he was not given notice of the hearing held on August 26, 2005, which resulted in his transfer's being rescinded. He claimed that failure to be notified about the hearing resulted in denial of due process as he had a "conditional liberty" interest or "conditional entitlement" interest in his prospective parole. Further, he argued that denial of parole would result in an "increased period of incarceration of 43 months."

Appellant posited a second issue in which he sought determination of whether a "parole grantee [has] a right to . . . be heard in person and to present witnesses and documentary evidence" when the Post Prison Transfer Board rescinds its approval of parole previously granted to a criminal defendant. As his remedy, he prayed for reinstatement of parole granted by the

A writ of *habeas corpus* is proper when a judgment of conviction is invalid on its face or when a circuit court lacked jurisdiction over the cause. Ark. Code Ann. §16-112-103(a) (Repl. 2006). *See also Mackey v. Lockhart*, 307 Ark. 321, 819 S.W.2d 702 (1991). Moreover, this court has specifically noted that the remedy of state *habeas corpus* is unavailable for attacking parole decisions, including eligibility for parole and revocation of parole. *See Blevins v. Norris*, 291 Ark. 70, 722 S.W.2d 573 (1987); *Baker v. Lockhart*, 288 Ark. 91, 702 S.W.2d 403 (1986) (*per curiam*); *Bargo v. Lockhart*, 279 Ark. 180, 650 S.W.2d 227 (1983).

In the instant matter, appellant makes no contention the court that convicted him was without jurisdiction, or that the judgment was facially invalid. Instead, he claimed only injury related to parole eligibility. His remedy, therefore, was not by *habeas corpus*. We find no error in the trial court's decision, and accordingly dismiss the appeal and hold the motions moot.

Appeal dismissed; motions moot.

Board after the June 30, 2005, hearing, including all conditions set forth therein. In support of his contentions, appellant relied upon the regulations of the Board.