

ARKANSAS SUPREME COURT

No. CR 07-1246

Opinion Delivered February 21, 2008

HENRY BUNCH
Appellant

v.

STATE OF ARKANSAS
Appellee

PRO SE MOTION FOR EXTENSION
OF TIME TO FILE BRIEF [CIRCUIT
COURT OF WASHINGTON COUNTY,
CR 2004-2659, HON. WILLIAM A.
STOREY, JUDGE]

APPEAL DISMISSED; MOTION
MOOT.

PER CURIAM

In 2005, appellant Henry Bunch, who is also known as Henry Jay Bunch, was convicted by a jury of aggravated robbery, three counts of attempted capital murder, being a felon in possession of a firearm, theft by receiving, possession of methamphetamine, possession of pseudoephedrine with intent to manufacture methamphetamine and simultaneous possession of drugs and a firearm. He was sentenced as a habitual offender to an aggregate term of 1,140 months' imprisonment. On appeal, the Arkansas Court of Appeals merged the aggravated robbery conviction with one count of attempted capital murder, and affirmed the judgment as modified. *Bunch v. State*, 94 Ark. App. 247, 228 S.W.3d 534 (2006). An amended judgment entered on July 3, 2007, reflected the merger and reduced the aggregate sentence to 780 months' imprisonment.¹

On July 10, 2007, appellant filed in the trial court a pro se petition to correct an illegal sentence pursuant to Ark. Code Ann. §16-90-111 (Supp. 2005). The trial court denied the petition

¹A second amended judgment was entered on August 14, 2007.

after conducting a hearing, and appellant, proceeding pro se, has lodged an appeal here from the order. Now before us is appellant's pro se motion for extension of time to file his brief. As appellant could not be successful on appeal, the appeal is dismissed and the motion is moot. 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. *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).

In his petition filed in the trial court, appellant posited two reasons that the sentences imposed were illegal. First, he claimed that a prior conviction for robbery with a dangerous weapon was improperly counted to determine whether appellant's sentence could be enhanced by finding that he was a habitual criminal. Second, he argued that his sentences of 480 months' imprisonment for attempted capital murder exceeded the maximum for Class A felonies.²

Under section 16-90-111, a court may correct an illegal sentence, which is one that is illegal on its face. *Lovelace v. State*, 301 Ark. 519, 785 S.W.2d 212 (1990). A sentence is "illegal on its face" when it exceeds the statutory maximum for the offense for which the defendant was convicted. *Fritts v. State*, 298 Ark. 533, 768 S.W.2d 541 (1989).

Here, appellant was sentenced as a habitual offender under Ark. Code Ann. §5-4-501(a) (Supp. 2003) and the maximum sentence for Class A felonies was fifty years' imprisonment. Therefore, appellant's sentence of forty years' imprisonment did not exceed the maximum sentence allowed. In addition, appellant made no allegation that the trial court lacked the authority to impose it. *Donaldson v. State*, 370 Ark. 3, ___ S.W.3d ___ (2007).

²At the time appellant committed the crimes for which he was sentenced, attempted capital murder was classified as a Class A felony. Ark. Code Ann. §5-3-203 (1987). Act 1888 of 2005 modified section 5-3-203 to re-classify attempted capital murder as a Class Y felony. Section 5-3-203 (Supp. 2005).

Appellant also argued that a prior conviction was improperly used to designate him as a habitual offender. This argument was not sufficient to demonstrate that an otherwise valid sentence is illegal on its face. The determination of whether a sentence is illegal on its face “does not require the trial court to reexamine the validity of convictions used to establish that the petitioner was a habitual offender.” *Peterson v. State*, 317 Ark. 151, 153, 876 S.W.2d 261, 262 (1994).

Appeal dismissed; motion moot.