

ARKANSAS SUPREME COURT

No. 07-569

HOWARD JONES
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered September 13, 2007

PRO SE MOTION FOR
APPOINTMENT OF COUNSEL
[CIRCUIT COURT OF LINCOLN
COUNTY, LCV 2007-11, HON.
ROBERT H. WYATT, JR., JUDGE]

APPEAL DISMISSED; MOTION
MOOT.

PER CURIAM

In 1979, appellant Howard Jones entered a plea of guilty to theft of property and two counts of aggravated robbery and was sentenced to an aggregate term of fifty years' imprisonment. On February 1, 2007, appellant filed in the county in which he was incarcerated a pro se petition for writ of habeas corpus. As grounds for the writ, appellant contended that the judgment of conviction in his criminal case should be vacated because the state failed to enforce a plea agreement whereby he was to be eligible for parole after serving one-third of the sentence imposed. The court dismissed the petition, and appellant lodged an appeal in this court from the order. He now asks that counsel be appointed to represent him on appeal. We need not consider the motion as it is clear that the appeal is without merit. As appellant could not succeed on appeal, the appeal is dismissed, and the motion is moot.

This court has consistently held that an appeal from the denial of 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); *Harris v. State*, 318 Ark. 599, 887 S.W.2d 514 (1994) (per curiam); *Reed v. State*, 317 Ark. 286, 878 S.W.2d 376 (1994) (per curiam).

It is well settled that unless a petitioner can show that the trial court lacked jurisdiction or that the commitment was invalid on its face, there is no basis for a finding that a writ of habeas corpus should issue. *Birchett v. State*, 303 Ark. 220, 795 S.W.2d 53 (1990) (per curiam). The petitioner must plead either the facial invalidity of the judgment or the lack of jurisdiction and make a "showing, by affidavit or other evidence, [of] probable cause to believe" he is illegally detained. Ark. Code Ann. 16-112-103 (1987); see *Wallace v. Willock*, 301 Ark. 69, 781 S.W.2d 478 (1989), see also *Mackey v. Lockhart*, 307 Ark. 321, 819 S.W.2d 702 (1991).

In 1994, appellant raised the same ground for relief in an earlier petition for writ of habeas corpus. We affirmed the order of dismissal. *Jones v. State*, CR 94-794 (Ark. Dec. 12, 1994) (per curiam). As we noted at that time, a habeas corpus proceeding in state court is unavailable for challenging parole matters. *Blevins v. Norris*, 291 Ark. 70, 722 S.W.2d 573 (1987). Habeas corpus proceedings are limited to questions of whether the petitioner is in custody pursuant to a facially valid judgment of conviction obtained in a court with appropriate jurisdiction, and parole eligibility issues are not within the purview of the remedy. *Bargo v. Lockhart*, 279 Ark. 180, 650 S.W.2d 227 (1983); see also *Kozal v. Board of Correction*, 310 Ark. 648, 840 S.W.2d 164 (1992) (per curiam). As appellant's sole claim for relief in the habeas petition failed to demonstrate that the judgment in his criminal case was invalid on its face or that the trial court lacked jurisdiction, the court did not err when it dismissed the petition.

Appeal dismissed; motion moot.