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SUPREME COURT OF ARKANSAS

No. 09-422

CARLOS RAYMOND AGUILAR APPELLANT V. MIRIAM LESTER, GLEENOVER KNIGHT FITZPATRICK, AND STATE OF ARKANSAS APPELLEES	**Opinion Delivered** September 8, 2011 PRO SE APPEAL FROM THE LINCOLN COUNTY CIRCUIT COURT, LCV 2009-4, HON. JODI RAINES DENNIS, JUDGE AFFIRMED.

PER CURIAM

In March 2005, appellant Carlos Aguilar pled guilty to the offenses of second-degree murder and residential burglary for which he was sentenced to consecutive terms totaling thirty years' imprisonment. In January 2009, appellant filed in Lincoln County Circuit Court a petition for declaratory judgment and writ of mandamus, seeking to compel the Arkansas Department of Correction to recompute his parole-eligibility date. The circuit court denied the petition, and appellant now appeals that decision. We affirm.

A petition for declaratory judgment and writ of mandamus is civil in nature. *Wiggins v. State*, 299 Ark. 180, 771 S.W.2d 759 (1989). We have held that there are four requisite conditions before declaratory relief may be granted: (1) there must exist a justiciable controversy; (2) the controversy must be between persons whose interests are adverse; (3) the party seeking relief must have a legal interest in the controversy; (4) the issue involved in the controversy must be ripe for judicial determination. *Arkansas Dep't of Human Servs. v. Ross-Lawhon*, 290 Ark. 578, 721 S.W.2d 658 (1986). The declared legislative purpose is "to

settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations." Ark. Code Ann. § 16-111-102(a) (Repl. 2006). Our declaratory judgment act was not intended to allow any question to be presented by any person; the matters must first be justiciable. *Andres v. First Ark. Dev. Fin. Corp.*, 230 Ark. 594, 606, 324 S.W.2d 97, 104 (1959).

The purpose of a writ of mandamus is to enforce an established right or to enforce the performance of a duty. *Arkansas Democrat-Gazette v. Zimmerman*, 341 Ark. 771, 777, 20 S.W.3d 301, 304 (2000). A writ of mandamus is issued by this court only to compel an official or judge to take some action, and, when requesting the writ, a petitioner must show a clear and certain right to the relief sought and the absence of any other remedy. *Id.* But a writ of mandamus will not lie to control or review matters of discretion. *Id.*

Parole eligibility is determined by the law in effect at the time the crime is committed. *Boles v. Huckabee*, 340 Ark. 410, 12 S.W.3d 201 (2000). The determination of parole eligibility is solely within the province of the Department of Correction. *Clardy v. State*, 2011 Ark. 201 (per curiam); *Morris v. State*, 333 Ark. 466, 970 S.W.2d 210 (1998).

Appellant's first contention is that the circuit court did not comply with the statutory requirement of holding a hearing within two to seven days from the filing of the petition. Appellant, however, is relying on a prior version of the relevant statute. Since 1991, Arkansas Code Annotated section 16-115-104 has provided that it is within the circuit court's discretion to hold a hearing within forty-five days from the date of the application. *Jenkins v. Bogard*, 335 Ark. 334, 338, 980 S.W.2d 270 (1998). Appellant has not argued or shown that the circuit court abused its discretion by failing to conduct a hearing.

Next, appellant asserts that it was a denial of due process and equal protection of law for Act 1805 of 2001 to be used to deny him parole eligibility. Act 1805 of 2001, codified as Arkansas Code Annotated section 16-93-609, provides that any person who commits a felony offense after August 13, 2001, and "has previously been found guilty of or pleaded guilty or nolo contendere to any violent felony offense . . . shall not be eligible for release on parole by the board." While not disputing his prior conviction for a violent felony, appellant contends that the statute should not be applied to him when there was no judicial determination of his status as a habitual offender at the time of his second-degree murder conviction. This argument lacks merit because the finding that prior felonies exist does not need to be judicially determined for purposes of parole classification. *See Blevins v. Norris*, 291 Ark. 70, 722 S.W.2d 573 (1987).

Appellant's final contention is that his classification as a second-time violent offender for purposes of parole eligibility violates the Ex Post Facto clause of the United States Constitution. There are two critical elements that must be present for a criminal law to be *ex post facto*: (1) it must be retrospective, that is, it must apply to events occurring before its enactment; (2) it must disadvantage the offender affected by it. *Brown v. Lockhart*, 288 Ark. 483, 707 S.W.2d 304 (1986). Neither element is present in this case. Act 1805 was in effect at the time of appellant's present offenses, and it is applied by the department to these present offenses, not to appellant's prior conviction. Therefore, there was no *ex post facto* violation. *Id.* As appellant failed to show that he was entitled to declaratory judgment or a writ of mandamus, we affirm.

Affirmed.