

SUPREME COURT OF ARKANSAS

No. 10-1199

TIMOTHY WISE

APPELLANT

V.

LARRY NORRIS, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION

APPELLEE

Opinion Delivered September 15, 2011

PRO SE APPEAL FROM THE
JEFFERSON COUNTY CIRCUIT COURT
[CV 2009-978], HON. JODI RAINES
DENNIS, JUDGEAFFIRMED.**PER CURIAM**

Appellant Timothy Wise appeals an order of the Jefferson County Circuit Court dismissing his petition for declaratory judgment and writ of mandamus. We affirm.

On October 29, 2007, appellant entered a plea of guilty on a charge of first-degree battery. Pursuant to his plea, the State moved to dismiss both a firearm enhancement and a habitual-offender allegation. The State made no recommendation as to appellant's sentence, and appellant was informed of the statutory range of punishment for the offense. At the subsequent sentencing hearing, the circuit court, after noting that the presumptive sentence for the offense was 264 months' imprisonment, sentenced appellant to a term of 240 months' imprisonment in the Arkansas Department of Correction (ADC).

In his petition, appellant asserted that at the time of his plea he was not given meaningful and adequate notice that he would be required to serve one hundred percent of his sentence and that he would not be eligible for parole, as it was not the sentencing judge's intent that he not

be eligible for parole. According to appellant, the ADC's determination, pursuant to Arkansas Code Annotated § 16-93-609(b)(1) and (2) (Repl. 2006), that he is not eligible for parole because of the classification of his offense and the nature of his prior offenses, resulted in a violation of his constitutional rights. Appellant asserts that there is a reasonable probability that he would not have pled guilty had he known that he would have to serve the full sentence. Appellant requested that the circuit court declare that the application of section 16-93-609(b)(1) and (2) was unconstitutional as applied to him and to require appellee to either recalculate the time that appellant must serve or send his case back to circuit court for resentencing.

The circuit court dismissed appellant's petition after finding that he failed to demonstrate any viable basis for relief. We find no error.

Appellant's arguments constitute a collateral attack challenging his guilty plea and the judgment entered against him. Such a collateral attack is not a cognizable claim in a petition for declaratory judgment. *See Johnson v. State*, 340 Ark. 413, 12 S.W.3d 203 (2000) (per curiam). A declaratory judgment is neither a substitute for an appeal, *Gran v. Hale*, 294 Ark. 563, 745 S.W.2d 129 (1988), nor is it a substitute for postconviction relief properly obtained through a petition under Arkansas Rule of Criminal Procedure 37.1 (2011). Declaratory judgments are not ordinarily granted where another adequate remedy is available. *Jegley v. Picado*, 349 Ark. 600, 80 S.W.3d 332 (2002). Similarly, the purpose of a writ of mandamus in a civil or a criminal case is to enforce an established right or to enforce the performance of a duty. *Smith v. Fox*, 358 Ark. 388, 193 S.W.3d 238 (2004). A mandamus action is also not a substitute for an appeal. *Gran*, 294 Ark. 563, 745 S.W.2d 129.

While appellant labeled his petition as one for declaratory judgment and writ of

mandamus, he sought only to challenge the sentences imposed as a result of his guilty-plea agreement. Appellant cannot now raise the terms of his plea agreement as a challenge to the ADC's calculation of his parole eligibility through a declaratory judgment and mandamus action. Appellant's claims should have been raised in a timely petition under Rule 37.1. Because appellant failed to present any cognizable ground upon which the court could grant the relief sought by means of a complaint for declaratory judgment and a petition for writ of mandamus, it was not error for the circuit court to dismiss his petition.

Affirmed.