

Cite as 2009 Ark. 499

**SUPREME COURT OF ARKANSAS**

No. 09-687

JAMES WINGFIELD  
Appellant

v.

STATE OF ARKANSAS  
Appellee**Opinion Delivered**      October 8, 2009PRO SE MOTION FOR EXTENSION  
OF TIME TO FILE APPELLANT'S  
BRIEF [CIRCUIT COURT OF LEE  
COUNTY, CV 2009-81, HON. L. T.  
SIMES II, JUDGE]APPEAL DISMISSED; MOTION  
MOOT.**PER CURIAM**

Appellant James Wingfield, an inmate incarcerated in the Arkansas Department of Correction, filed a petition for writ of habeas corpus under Arkansas Code Annotated §§ 16-112-101 – 16-112-123 (Repl. 2006) in Lee County Circuit Court. The circuit court denied the petition and appellant lodged an appeal of the order in this court. Appellant filed a motion requesting an extension of time in which to file his brief and has since tendered his brief. Because it is clear that appellant cannot succeed on appeal, we dismiss the appeal and need not consider the motion.

An appeal of the denial of postconviction relief, including an appeal from an order that denied a petition for writ of habeas corpus, will not be permitted to go forward where it is clear that the appellant could not prevail. *Lukach v. State*, 369 Ark. 475, 255 S.W.3d 832 (2007) (per curiam). Here, appellant failed to state a claim in his petition that was cognizable in a habeas proceeding.

The burden is on the petitioner in a habeas corpus petition to establish that the trial court lacked jurisdiction or that the commitment was invalid on its face; otherwise, there is no basis for a finding that a writ of habeas corpus should issue. *Young v. Norris*, 365 Ark. 219, 226 S.W.3d 797 (2006) (per curiam).

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The petitioner must plead either the facial invalidity or the lack of jurisdiction and make a "showing by affidavit or other evidence, [of] probable cause to believe" he is illegally detained. *Id.* at 221, 226 S.W.3d at 798-799.

Appellant alleged in his petition that his sentence was illegal because it was subject to Arkansas Code Annotated § 16-93-611 (Repl. 2006). Appellant asserted that application of the statute's limitations on parole eligibility was illegal because the act that extended the application of the statute past its original expiration date was not sufficiently clear to comport with constitutional requirements. Constitutional challenges to parole eligibility statutes are not cognizable in habeas corpus proceedings. *See Blevins v. Norris*, 291 Ark. 70, 722 S.W.2d 573 (1987); *see also McKinnon v. Norris*, 366 Ark. 404, 231 S.W.3d 725 (2006) (per curiam). Because it is clear that the appellant could not prevail and the circuit court did not err in denying the petition, we dismiss the appeal. Because the appeal is dismissed, appellant's motion for extension of time is moot.

Appeal dismissed; motion moot.