

Cite as 2011 Ark. 5

SUPREME COURT OF ARKANSAS

No. CR 09-316

WILLIE REYNOLDS
Appellant

v.

STATE OF ARKANSAS
Appellee**Opinion Delivered** January 13, 2011PRO SE APPEAL FROM THE
PULASKI COUNTY CIRCUIT
COURT, CR 89-2309, HON.
HERBERT T. WRIGHT, JR., JUDGE

AFFIRMED.

PER CURIAM

This court affirmed appellant Willie Reynolds's conviction for capital murder. *Reynolds v. State*, 310 Ark. 688, 840 S.W.2d 795 (1992). A federal proceeding resulted in issuance of a conditional writ of habeas corpus requiring a competency hearing. *See Reynolds v. Norris*, 86 F.3d 796 (8th Cir. 1996). The trial court subsequently ordered mental health evaluations that found appellant was initially unfit to proceed, but, at a later date after treatment, was competent. In 1998, before the date scheduled for his new trial, appellant entered a negotiated plea to first-degree murder and received a sentence of 360 months' imprisonment. *See Reynolds v. State*, 02-418 (Ark. July 5, 2002) (unpublished per curiam).

In 2008, appellant filed in the trial court a petition under Arkansas Code Annotated § 16-90-111 (Supp. 2003). The court dismissed the petition, finding it was in effect an untimely petition under Arkansas Rule of Criminal Procedure 37.1 (1998). Appellant lodged an appeal of the order in this court. We agree that the petition was not timely, even if appellant presented a claim that was cognizable under the statute.

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Appellant alleged in the petition that his sentence was illegal on its face and a double-jeopardy violation, but the basis for his claim was that the court had failed to properly note on the judgment credit that was due to him for time served for the first conviction. Appellant asserted that the jail-time credit indicated on the judgment included time served in prison on his previous sentence that should have given him credit for meritorious good time but did not. Because appellant did not allege that the sentence imposed was in excess of the maximum sentence imposed by statute, the argument he presented, at best, was one seeking modification of a sentence illegally imposed. *See Richie v. State*, 2009 Ark. 602, ___ S.W.3d ___ (when the sentence given is within the maximum prescribed by law, the court has authority to impose it); *see also Crawford v. Cashion*, 2010 Ark. 124, ___ S.W.3d ___ (per curiam) (prisoner classifications are committed to the discretion of prison officials and do not raise due-process concerns).

Appellant's request for relief was directed towards the calculation of his accrual of meritorious good time and the method used by the Department of Correction to determine his eligibility for parole. It was not concerned with an actual reduction of the sentence imposed, and, as a result, the petition stated facts that supported neither a claim to correct an illegal sentence nor a claim to correct a sentence imposed in an illegal manner. Even if appellant's claim could be construed as one for modification of an illegally-imposed sentence and thereby fall within the purview of the statute, his petition was not filed within the time restrictions set forth in the statute or Arkansas Rule of Criminal Procedure 37.2(c) (1998).

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Section 16-90-111(b)(1) requires that an order under the statute that reduces a sentence be entered within ninety days after the sentence is imposed or within sixty days after receipt of a mandate affirming the judgment or dismissing an appeal. Ark. Code Ann. § 16-90-111(b)(1). In addition, to the extent that a claim under the statute conflicts with the time limitations for postconviction relief under Rule 37.1, the statute has been superseded. *Rudrud v. State*, 2010 Ark. 439 (per curiam). In accord with Rule 37.2, a claim that a sentence was illegal or not legally imposed must be raised in a petition filed in the trial court within ninety days of the date that the judgment on a plea of guilty was entered. *Id.* In this case, appellant filed his petition more than ten years after the judgment was entered and his sentence imposed.

Even if appellant's claims were viable, he failed to raise those claims in a timely petition. The trial court did not err in dismissing the petition, and we affirm.

Affirmed.