

Cite as 2011 Ark. 153

SUPREME COURT OF ARKANSAS

No. 11-108

GUY CLAYTON BARNES
Appellant

v.

STATE OF ARKANSAS
Appellee**Opinion Delivered** April 7, 2011PRO SE MOTIONS TO AMEND THE
EVIDENCE AND FOR EXTENSION
OF TIME TO FILE BRIEF [LEE
COUNTY CIRCUIT COURT, CV
2010-130, HON. RICHARD L.
PROCTOR, JUDGE]APPEAL DISMISSED; MOTIONS
MOOT.**PER CURIAM**

Appellant Guy Clayton Barnes is an inmate incarcerated in the Arkansas Department of Correction (“ADC”). He filed in the county in which he is incarcerated a petition for writ of habeas corpus under Arkansas Code Annotated §§ 16-112-101 to -123 (Repl. 2006). The circuit court denied the petition, and appellant lodged this appeal. He now has filed two motions. One appears to request that this court accept evidence in the matter, and the other motion seeks an extension of time in which to file appellant’s brief. We need not address the merits of the motions because we dismiss the appeal, and the motions are therefore moot.

An appeal from an order that denied a petition for a postconviction relief, including a petition for writ of habeas corpus, will not be permitted to go forward where it is clear that the appellant could not prevail. *Hill v. Norris*, 2010 Ark. 287 (per curiam). A review of the record on appeal makes clear that appellant cannot prevail.

Cite as 2011 Ark. 153

The petition that appellant filed requested relief from a 2010 judgment that apparently reflected his convictions for drug charges. The case numbers written on the petition, however, appear to be those for a 1995 conviction. The grounds for relief listed in the petition allege errors in time computation and date of the offense that somehow relate to the trial court's apparent order that certain sentences run concurrently or consecutively. Appellant asserted that these errors resulted in an invalid sentence and illegal term of detention. He also sought to collaterally challenge charges in the 1995 conviction on the same basis as a "filed Rule - 37, petition."

The exhibits to the petition included a document that appears to be from the ADC that lists appellant's sentences on a number of charges, only some of which are referenced in the habeas petition. The exhibits also included a document that lists handwritten comments on a number of the sentences in the ADC document, contending that some of the sentences should have included suspended sentences, that some sentences were concurrent or consecutive, that one of the case numbers was incorrect because of the date of the offense, that the suspended sentences were not consistent with the charging statutes, that there was a deviation from the sentencing grid, and that an arrest warrant was invalid. Appellant additionally included in the exhibits his "affidavit" that stated that the other two documents demonstrated a time calculation error, that the error resulted in an illegal period of unlawful detention, and that a "sentencing phase Record" was necessary to his claims under his "Rule 37, petition" that were reincorporated for habeas relief.

Cite as 2011 Ark. 153

The circuit court concluded that appellant was alleging that the convictions on the case numbers listed in the petition and on the last three offenses listed in the ADC document were void. In the order denying relief, the court noted that the petitioner carries the burden in habeas proceedings and found that the petition contained conclusory allegations and lacked merit. We agree that the petition did not set forth a claim sufficient to support habeas relief.

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. *McCullough v. State*, 2010 Ark. 394 (per curiam). 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.* Appellant's petition did not contain such a demonstration, and, in addition, the record in this court is insufficient to review the claims appellant raised. The burden is on the party asserting error to bring up a sufficient record upon which to grant relief. *Shipman v. State*, 2010 Ark. 499 (per curiam).

Although the trial court assumed that appellant challenged a number of judgments against him, that was not clearly the intent. Appellant rather appeared to challenge the ADC's calculations instead of the actual judgments. No copies of the judgments were included in the exhibits, and, as noted, it was far from clear which, if any, judgments were the subject of the petition. Appellant had the burden to state a cognizable claim as to a judgment. *See Anderson v. Norris*, 370 Ark. 110, 257 S.W.3d 540 (2007) (per curiam).

Appellant did include in the petition allegations that he was subject to illegal detention and that some of his sentences were void or illegal. He did not, however, sufficiently describe

Cite as 2011 Ark. 153

for any claim how the judgment that he alleged was illegal or void so as to present a cognizable claim. As to three case numbers, he indicated that there was “a time computation error.” The specific error is never, however, clearly identified. For a conviction on a forgery charge listed in the ADC document that was attached as an exhibit, appellant appears to contend that the sentence was a Class Y felony rather than the C felony listed. But, to the extent that appellant would challenge that judgment, no record of the judgment was included.¹

The circuit court found the claims were conclusory. To the extent that they are not, appellant did not provide sufficient information in the petition to state a claim regarding any specific judgment. To the extent that appellant attempted to resurrect claims previously raised in a proceeding under Arkansas Rule of Criminal Procedure 37.1 (1995), the claims were not cognizable.² A petition for writ of habeas corpus is not a substitute for proceeding under Rule 37.1. *Tryon v. Hobbs*, 2011 Ark. 76 (per curiam). Appellant failed to meet his burden to state in his petition a claim that would support issuance of the writ, and he cannot therefore prevail on appeal.

Appeal dismissed; motions moot.

¹We are, moreover, unaware of any record in this court containing such a judgment.

²The records of this court show that appellant filed a Rule 37.1 petition in 1995. *See Barnes v. State*, CR 96-114 (Ark. Mar. 25, 1996) (unpublished per curiam). It is unclear whether this or another petition was referenced in the habeas petition.