

Cite as 2011 Ark. 201

SUPREME COURT OF ARKANSAS

No. CR 10-866

MELVIN CLARDY
Appellant

v.

STATE OF ARKANSAS
Appellee**Opinion Delivered** May 5, 2011PRO SE MOTION FOR EXTENSION
OF BRIEF TIME [APPEAL FROM
MILLER COUNTY CIRCUIT
COURT, CR 2004-260, HON. KIRK
DOUGLAS JOHNSON, JUDGE]APPEAL DISMISSED; MOTION
MOOT.**PER CURIAM**

On May 25, 2004, pursuant to a plea agreement, appellant Melvin Clardy was placed on probation for a period of seventy-two months, and his probation was subsequently revoked on April 4, 2006. Appellant was then sentenced in accordance with the original plea agreement to a term of thirty-six months' incarceration in the Arkansas Department of Correction for one of the charges against him and an additional term of sixty months' incarceration for the remaining two charges. These sentences were ordered to be served concurrently.

Appellant was subsequently released on parole and, on January 19, 2010, he filed in the trial court a petition for writ of mandamus, seeking a declaratory judgment that appellant's sentences and terms of probation should run concurrently. This petition was denied by the trial court, and appellant timely filed an appeal from the trial court's order of denial.

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Now before us is appellant's pro se motion for an extension of time in which to file his brief. Because it is clear that appellant could not prevail, we dismiss his appeal, and his motion is accordingly moot.

The gravamen of appellant's complaint was that, had his sentences and periods of probation been ordered to run concurrently, his term of parole would have already ended. He cited to Arkansas Code Annotated § 5-4-307 (Repl. 2005), which requires that multiple periods of probation or suspended imposition of sentence run concurrently with any term of imprisonment or parole. Our review of the record, however, shows no instance where appellant's terms of probation did not comport with this statute.

Appellant served just over twenty-two months of a seventy-two-month term of probation, at which time his probation was revoked. He was then sentenced to two concurrent terms of imprisonment, from which he was later released on parole. Clearly, appellant was only sentenced to a term of imprisonment once his term of probation had been revoked and was no longer in effect. There was no term of probation in effect at the time that could have been ordered concurrent with appellant's term of imprisonment.

To the extent that appellant argued that his original terms of probation should have been ordered to run concurrently, the record demonstrates that they were so ordered. To the extent that appellant contended that his terms of imprisonment should have been ordered concurrent, we note both that the terms were concurrent and that this was an incorrect statement of the law. *See* Ark. Code Ann. § 5-4-403 (Repl. 2005) (explaining that the trial

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court may decide whether terms of imprisonment are to run consecutively or concurrently). Finally, to the extent that appellant challenged some aspect of how his parole eligibility was calculated, we note that the determination of parole eligibility is solely the province of the Department of Correction. *See Morris v. State*, 333 Ark. 466, 970 S.W.2d 210 (1998).

Quite simply, appellant petitioned the trial court for a writ of mandamus to correct a perceived wrong that did not actually exist. Without pleading facts sufficient to give rise to a legal remedy, there is no basis for a writ of mandamus to issue. *See T.J. v. Hargrove*, 362 Ark. 649, 210 S.W.3d 79 (2005). Because there is no basis for issuance of the writ that appellant seeks, appellant could not prevail if his appeal were allowed to go forward. Thus, we dismiss the appeal, and his motion for an extension of time in which to file his brief is moot.

Appeal dismissed; motion moot.