

SUPREME COURT OF ARKANSAS

No. CR-13-375

MELVIN SMITH, JR.

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered June 6, 2013

PRO SE APPELLANT'S MOTION FOR APPOINTMENT OF COUNSEL [PULASKI COUNTY CIRCUIT COURT, 60CR-97-1297, HON. HERBERT T. WRIGHT, JR., JUDGE]

APPEAL DISMISSED; MOTION MOOT.

PER CURIAM

On November 30, 1977, judgment was entered in the Pulaski County Circuit Court reflecting that appellant Melvin Smith, Jr., had been found guilty by a jury of burglary and first-degree murder. Consecutive terms of six years and life imprisonment were imposed. No appeal was taken.

In 2012, appellant filed in the trial court a pro se petition to correct an illegal sentence pursuant to Arkansas Code Annotated section 16-90-111. The petition was denied, and appellant lodged an appeal in this court from the order. Now before us is appellant's motion for appointment of counsel.

We need not consider the motion because it is clear that appellant could not prevail on appeal. This court will not permit an appeal from an order that denied a petition for postconviction relief to go forward where it is clear that the appellant could not prevail. *Hickman v. State*, 2012 Ark. 359 (per curiam); see *Coleman v. State*, 2013 Ark. 152 (per curiam). When appellant was convicted and sentenced in 1977, Arkansas Code Annotated

section 16-90-111 was not in effect. It was created by Act 431 of 1983.¹ We held in *Abdullah v. State*, 290 Ark. 537, 720 S.W.2d 902 (1986), that relief is not available under Act 431 for persons convicted before the Act went into effect.

Appeal dismissed; motion moot.

Melvin Smith, Jr., pro se appellant.

No response.

¹The predecessor to Act 431 was Arkansas Statutes Annotated section 43-2314. That statute provided essentially the same relief as accorded by Act 431 in that it permitted a court to correct a sentence imposed in an illegal manner within 120 days after the sentence was imposed or within 120 days of a specified action by an appellate court. After the 120-day period elapsed, relief was not available under the statute unless the petitioner demonstrated that the sentence imposed was illegal on its face.