

SUPREME COURT OF ARKANSAS

No. CR-13-412

DALE EDWARD HAYDEN
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered June 20, 2013

PRO SE MOTION FOR
APPOINTMENT OF COUNSEL
[NEVADA COUNTY CIRCUIT COURT,
25CR-89-1, HON. RANDY WRIGHT,
JUDGEAPPEAL DISMISSED; MOTION
MOOT.**PER CURIAM**

In 1989, appellant Dale Edward Hayden entered a plea of guilty to the offense of terroristic threatening in the first degree. He was placed on five years' supervised probation. One of the conditions of appellant's probation required him to obey all federal and state laws. In 1992, appellant was convicted in municipal court of disorderly conduct and harassing communications. Based on that conviction, probation was revoked, and appellant was sentenced to five years' imprisonment. The Arkansas Court of Appeals affirmed the revocation order. *Hayden v. State*, CACR 92-1356 (Ark. App. Feb. 2, 1994) (unpublished).

In 2012, counsel for appellant filed in the trial court a petition for writ of error coram nobis, contending that appellant was mentally incompetent when he was found guilty and that the finding of guilt should be set aside for that reason. At the hearing held on the coram-nobis petition, counsel informed the court that the purpose of the petition was to set aside the revocation of probation that resulted in the five-year sentence. The trial court denied the petition, and appellant, proceeding pro se, has lodged an appeal from that order. Now before

us is his motion for appointment of counsel.

We need not address the merits of the motion because it is clear from the record that appellant could not prevail on appeal if the appeal were permitted to go forward. Accordingly, the appeal is dismissed, and the motion is moot. An appeal from an order that denied a petition for postconviction relief, including the denial of a petition for writ of error coram nobis, will not be permitted to proceed where it is clear that the appellant could not prevail. *Davis v. State*, 2012 Ark. 228 (per curiam); *Smith v. State*, 2011 Ark. 306 (per curiam).

The petition for writ of error coram nobis filed by appellant in the trial court was moot. Appellant filed the coram-nobis petition in 2012, approximately twenty years after the five-year sentence was imposed and some years after appellant had served the sentence. The writ provides a petitioner relief from his or her criminal judgment of conviction, and, if granted, the petitioner will be given a new trial, or, in the case of a revocation, a new revocation proceeding. *See Smith v. State*, 2011 Ark. 306 (per curiam) (citing *Penn v. State*, 282 Ark. 571, 574, 670 S.W.2d 426,428 (1984)). As petitioner had served the sentence by the time he filed the petition, his claim was moot, and a new revocation proceeding would not be an appropriate remedy, even if there were cause to grant the writ. *Id.*; *Webb v. State*, 2009 Ark. 497 (per curiam); *see also Anderson v. State*, 352 Ark. 36, 98 S.W.3d 403 (2003) (per curiam).

Appeal dismissed; motion moot.

Dale Edward Hayden, pro se appellant.

No response.