ARKANSAS SUPREME COURT

No. CR 06-239

NOT DESIGNATED FOR PUBLICATION

CLYDE JOHNSON
Petitioner

v.

HON. DAVID BURNETT, CIRCUIT JUDGE
Respondent

Opinion Delivered **April 13, 2006**

PRO SE PETITION FOR WRIT OF MANDAMUS [CIRCUIT COURT OF CRITTENDEN COUNTY, CR 90-181]

PETITION DENIED

PER CURIAM

In 1991, judgment was entered in the Circuit Court of Crittenden County reflecting that Clyde Johnson had been found guilty by a jury of aggravated robbery and sentenced as a habitual offender to fifty years' imprisonment. The Arkansas Court of Appeals affirmed. *Johnson v. State*, CACR 00-815 (Ark. App. October 17, 2001).

On March 26, 2004, the trial court granted Johnson's petition for postconviction relief pursuant to Criminal Procedure Rule 37.1. The order provided that he would enter a negotiated plea of guilty to "the crime charged" and be sentenced to twenty-five years' imprisonment with credit for a particular period of time spent in custody. An amended judgment was entered in the trial court on March 26, 2004, providing that Johnson was sentenced to twenty-five years' imprisonment for aggravated robbery.

A second Rule 37.1 order was entered on April 4, 2005, that was not labeled an amended order, but which had the effect of amending that part of the March 26, 2004, order pertaining to credit against the sentence for time spent in custody. The second order also set a sentence of twenty-five years for the crime charged but added that the sentence was for a Class B Felony rather than a Class Y Felony.

On March 7, 2006, Johnson filed the instant *pro se* petition for writ of mandamus in which

he asks that this court compel Circuit Judge David Burnett to enter an order, or to correct an order previously entered, to "amend the charge" for aggravated robbery to one of robbery with a maximum sentence of twenty years' imprisonment as a Class B felony. The apparent crux of Johnson's petition is that the sentence of twenty-five years' imprisonment as imposed in the Rule 37.1 orders and the judgment entered in 2004 exceeded the sentencing range for a Class B felony. He argues that Judge Burnett should be directed by this court to amend the charge and reduce the sentenced imposed to twenty years.

We need not reach the question of whether the sentence imposed was excessive because it is clear that mandamus is not the proper remedy to raise the question in this court. The purpose of a writ of mandamus in a civil or a criminal case is to enforce an established right or to enforce the performance of a duty. *Smith v. Fox,* 358 Ark. 388,___ S.W.3d ___ (September 16, 2004). When requesting a writ of mandamus, a petitioner must show a clear and certain right to the relief sought and the absence of any other adequate remedy. *Manila School Dist. No. 15 v. Wagner,* 357 Ark. 20, 159 S.W.3d 285 (2004). If Johnson was not satisfied with either the terms of the March 26, 2004, or the April 4, 2005, order, his remedy was an appeal from the orders, not a mandamus action in this court. A mandamus action is not a substitute for an appeal. *Gran v. Hale*, 294 Ark. 563, 745 S.W.2d 129 (1988).

Petition denied.