

ARKANSAS SUPREME COURT

No. CR 08-85

WILLIAM GREG SMITH
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered February 28, 2007

PRO SE PETITION FOR WRIT OF
MANDAMUS AND CERTIORARI
[CIRCUIT COURT OF GARLAND
COUNTY, CR 2004-270, HON. JOHN
H. WRIGHT, JUDGE]

PETITION DENIED.

PER CURIAM

A jury found petitioner William Greg Smith guilty of engaging children in sexually explicit conduct for use in visual or print medium and sentenced him to 240 months' imprisonment in the Arkansas Department of Correction. This court affirmed the judgment. *Smith v. State*, 363 Ark. 456, 215 S.W.3d 626 (2005). Petitioner filed in the trial court a pro se petition for postconviction relief under Ark. R. Crim. P. 37.1 that was denied. This court dismissed petitioner's appeal of that order. *Smith v. State*, 367 Ark. 611, ___ S.W.3d ___ (2006) (per curiam).

In 2007, petitioner filed in the trial court a petition for writ of habeas corpus and, on a later date, a petition for declaratory judgment. Both petitions were denied. Petitioner did not appeal those orders. He now brings in this court a petition for writ of mandamus and, either additionally or alternatively, certiorari. Petitioner alleges that the trial court committed a number of errors concerning his petitions and he requests this court review his petition for habeas corpus relief and direct the trial court to "process" his petition for declaratory judgment.

Petitioner contends that the State did not respond to his petitions for writ of habeas corpus and declaratory judgment and asserts that this failure should have prevented the trial court from considering his petitions. Petitioner appears to mistakenly believe that the State's failure to respond somehow prevented him from bringing an appeal of the trial court's orders denying the two petitions. He cites no authority for, and does not explain, that position, merely contending that the petitions were therefore "unripe" for appellate review. We will not consider an argument without authority. *See Rikard v. State*, 354 Ark. 345, 123 S.W.3d 114 (2003).

The purpose of a writ of mandamus is to enforce an established right or to enforce the performance of a duty. *Manila School Dist. No. 15 v. Wagner*, 357 Ark. 20, 159 S.W.3d 285 (2004). It is issued by this court only to compel an officer or judge to take some action. *Arkansas Democrat-Gazette v. Zimmerman*, 341 Ark. 771, 20 S.W.3d 301 (2000). A petitioner must show a clear and certain right to the relief sought and the absence of any other adequate remedy when requesting a writ of mandamus. *Id.* at 777, 20 S.W.3d at 304.

Extraordinary relief, such as mandamus, is not a substitute for an appeal. *Dean v. Williams*, 339 Ark. 439, 6 S.W.3d 89 (1999). Nor can a petitioner use the writ to challenge his conviction by requesting this court to issue the writ directly. This court has refused to issue a writ of mandamus where the petitioner had the adequate remedy of raising an issue on appeal. *Johnson v. Hargrove*, 362 Ark. 649, 210 S.W.3d 79 (2005)(quoting *Hanley v. Arkansas Claims Comm'n*, 333 Ark. 159, 164, 970 S.W.2d 198, 200 (1998)). An extraordinary writ is not available to a petitioner to challenge a conviction in substitute for appeal. *See Gran v. Hale*, 294 Ark. 563, 745 S.W.2d 129 (1988).

Here, petitioner would have this court directly review his petition for habeas relief and order the trial court to provide relief on his petition for declaratory judgment. He reiterates the same

arguments made in his petitions in the trial court in support of our granting mandamus. We will not consider those arguments as it is clear that petitioner could have brought an appeal of the trial court's orders denying relief, and chose not to do so. He seeks in this court the same relief that would be sought in an appeal. There was an adequate remedy available to petitioner without resort to mandamus.

As to petitioner's request for certiorari, our standard of review includes two requirements that must be satisfied in order for this court to grant a writ of certiorari. *Helena-West Helena Sch. Dist. # 2 of Phillips County v. Circuit Court of Phillips County*, ___ Ark. ___, ___ S.W.3d ___ (Mar. 15, 2007). The first requirement is that there can be no other adequate remedy but for the writ of certiorari. Second, a writ of certiorari lies only where (1) it is apparent on the face of the record that there has been a plain, manifest, clear, and gross abuse of discretion, or (2) there is a lack of jurisdiction, an act in excess of jurisdiction on the face of the record, or the proceedings are erroneous on the face of the record. *Id.*

Here, appellant had the remedy of an appeal. We have no need for the record to be brought up through a writ of certiorari because we will not review the circuit court's denial of petitioner's petition for declaratory judgment. To the extent that petitioner may be requesting a belated appeal of that decision, we note that no notice of appeal appears in the partial record before us. If a petitioner fails to timely file notice of appeal, a belated appeal in accordance with Ark. R. App. P.--Crim. 2(e) will not be allowed absent a showing by the petitioner of good cause for the failure to comply with proper procedure. *Garner v. State*, 293 Ark. 309, 737 S.W.2d 637 (1987) (per curiam). As previously noted in regard to his allegations concerning the absence of a response by the State, petitioner has stated no good cause for that failure.

Petitioner has not shown a basis for relief either through a writ of mandamus or certiorari.

As a result, we deny the petition.

Petition denied.