

**SUPREME COURT OF ARKANSAS**

No. CR 12-314

TERRANCE ARNEZ LAMBERT  
APPELLANT

v.

STATE OF ARKANSAS  
APPELLEE**Opinion Delivered** August 14, 2012

PRO SE MOTIONS FOR EXTENSION OF BRIEF TIME AND FOR PHOTOCOPYING AT PUBLIC EXPENSE [APPEAL FROM THE SEBASTIAN COUNTY CIRCUIT COURT, FORT SMITH DISTRICT, CR 10-823 & CR 10-824, HON. JAMES O. COX, JUDGE]

APPEAL DISMISSED; MOTIONS MOOT.

**PER CURIAM**

Pursuant to a negotiated plea agreement, appellant Terrance Arnez Lambert pled guilty on January 31, 2011, to first-degree domestic battery, second-degree battery, and second-degree terroristic threatening, and a cumulative sentence of ninety-six months' incarceration in the Arkansas Department of Correction was imposed along with an additional 144 months' suspended imposition of sentence. No appeal was taken from the judgment. Appellant then sought in the circuit court postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2011). His petition was denied, and no appeal was taken.

On March 9, 2012, appellant filed in the circuit court a petition to correct an illegal sentence pursuant to Arkansas Code Annotated section 16-90-111 (Repl. 2006), in which he alleged that his sentence was illegal because trial counsel's advice regarding appellant's parole eligibility was erroneous, which amounted to a denial of effective assistance of counsel. The

circuit court denied the petition by written order on March 19, 2012, and appellant timely filed an appeal from this order.

Now before us are appellant's motions for an extension of time in which to file his brief and for a copy of the record at public expense. Because it is clear that appellant could not prevail if his appeal were allowed to proceed, we dismiss the appeal, and his motions are moot. This court will not permit an appeal from an order that denied a petition for postconviction relief, including a petition under Arkansas Code Annotated section 16-90-111, to go forward where it is clear that the appellant could not prevail. *See Morgan v. State*, 2012 Ark. 227 (per curiam) (citing *Turner v. State*, 2012 Ark. 99 (per curiam)).

Where a petition to reduce an illegal sentence is based on allegations of ineffective assistance of counsel, the petition is properly treated as a petition for postconviction relief under Arkansas Rule of Criminal Procedure 37.1. *See Gonder v. State*, 2011 Ark. 248, \_\_\_ S.W.3d \_\_\_. A petition that seeks postconviction relief cognizable under Rule 37.1 is governed by that rule, regardless of the label placed on it by a petitioner. *See id.*; *Musgrove v. State*, 2010 Ark. 458 (per curiam); *Carter v. State*, 2010 Ark. 349 (per curiam); *Jackson v. State*, 2010 Ark. 157 (per curiam). Rule 37.1(b) does not allow for a second petition to be filed under the rule unless the first petition was dismissed without prejudice. *See Omar v. State*, 2011 Ark. 55 (per curiam). Therefore, because appellant had already filed a Rule 37.1 petition, he was barred from submitting a subsequent petition under that Rule, and his petition was subject to dismissal on that basis, regardless of the label he placed on it. *See Gonder*, 2012 Ark. 248, \_\_\_ S.W.3d \_\_\_; *Omar*, 2011 Ark. 55 (citing *Carter v. State*, 2010 Ark. 349 (per curiam)).

Moreover, we note that, even if we were to consider appellant's petition under Arkansas Code Annotated section 16-90-111, the appeal would still be subject to dismissal as untimely. Under that statute, a circuit court may correct an illegal sentence at any time, but it may correct a sentence imposed in an illegal manner only within ninety days of the entry of that sentence. Ark. Code Ann. § 16-90-111(a)–(b). Appellant was sentenced to ninety-six months on the first-degree domestic-battery conviction, a Class B felony; seventy-two months on the second-degree battery, a Class D felony; and twelve months on the second-degree terroristic threatening, a Class A misdemeanor. *See* Ark. Code Ann. § 5-26-303 (Repl. 2005); Ark. Code Ann. § 5-13-202; Ark. Code Ann. § 5-13-301. All of those sentences are within the statutory range for their respective classification. *See* Ark. Code Ann. § 5-4-401. Sentencing in Arkansas is entirely a matter of statute. *McArty v. Hobbs*, 2012 Ark. 257 (per curiam). If a sentence is within the limits set by the legislature, it is legal. *Id.* (citing *Jackson v. State*, 2011 Ark. 49, \_\_\_ S.W.3d \_\_\_). Thus, at best, appellant was contending that his sentence was imposed in an illegal manner, and a petition to correct such a sentence must be filed in the circuit court within ninety days of the date of entry. Appellant's petition was filed 403 days after his sentence was entered.

Based on the foregoing, it is clear that appellant's petition was subject to dismissal by the circuit court, and he could not prevail on appeal if his appeal were allowed to proceed. The appeal is therefore dismissed, and appellant's motions are moot.

Appeal dismissed; motions moot.

*Terrance Arnez Lambert*, pro se appellant.

No response.