

SUPREME COURT OF ARKANSAS

No. CR 12-490

JEFFERY L. TALLEY

APPELLANT

v.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered August 14, 2012

PRO SE MOTION TO STAY APPEAL
AND FOR COPY OF RECORD
[PULASKI COUNTY CIRCUIT COURT,
60CR 03-713, HON. CHRISTOPHER
CHARLES PIAZZA, JUDGE]

APPEAL DISMISSED; MOTIONS MOOT.

PER CURIAM

In 2003, appellant Jeffery L. Talley entered a plea of guilty to four felony offenses. He was sentenced to an aggregate term of 360 months' imprisonment. The judgment was amended later in 2003 to reflect that the aggregate sentence imposed was 300 months.

Approximately eight years later in 2012, appellant filed in the trial court a pro se petition to correct the sentence pursuant to Arkansas Code Annotated section 16-90-111 (Supp. 2011). Appellant contended in the petition that the sentence imposed in 2003 was illegal because he was denied a number of constitutional rights, including the Sixth Amendment right to effective assistance of counsel. He argued specifically that his attorney misled him about when appellant would be eligible for parole. He also claimed that his sentence was reduced to concurrent terms totaling 300 months because he filed a motion to withdraw his guilty plea, and the State was retaliating against him for filing the motion by requiring him to serve 100 percent of the term. He also suggested that his parole-eligibility date was being purposefully miscalculated by the State and the Arkansas Department of Correction. The petition was denied on the ground that

it was an untimely petition for postconviction relief, and appellant lodged an appeal here. Now before us are appellant's motions to stay the appeal and for a copy of the record on appeal.

We need not consider the motions 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. *Morgan v. State*, 2012 Ark. 227 (per curiam); *Johnson v. State*, 2011 Ark. 455 (per curiam); *Clemons v. State*, 2011 Ark. 345 (per curiam); *Gilcrease v. State*, 2011 Ark. 108 (per curiam); *Wormley v. State*, 2011 Ark. 107 (per curiam); *Delamar v. State*, 2011 Ark. 87 (per curiam); *Morgan v. State*, 2010 Ark. 504 (per curiam); *Goldsmith v. State*, 2010 Ark. 158 (per curiam); *Watkins v. State*, 2010 Ark. 156, 362 S.W.3d 910 (per curiam); *Meraz v. State*, 2010 Ark. 121 (per curiam); *Smith v. State*, 367 Ark. 611, 242 S.W.3d 253 (2006) (per curiam).

Arkansas Rule of Criminal Procedure 37.2(b) (2011) provides that all grounds for postconviction relief, including claims that a sentence is illegal or illegally imposed, must be raised in a petition under Rule 37.1. *See Harris v. State*, 318 Ark. 599, 887 S.W.2d 514 (1994) (per curiam). Arkansas Code Annotated section 16-90-111, which permits the trial court to correct a sentence imposed in an illegal manner within ninety days after the sentence is imposed and to correct an illegal sentence at any time, is in conflict with the time limits imposed by Rule 37.2, which requires that a petition claiming relief under this rule must be filed in the trial court within ninety days of the date of entry of judgment when a defendant pleads guilty. *See Morgan*, 2012 Ark. 227.

We have consistently held that Arkansas Code Annotated section 16-90-111 has been superseded to the extent that it conflicts with the time limitations for postconviction relief under Rule 37.1. *Morgan*, 2012 Ark. 227; *Velcoff v. State*, 2011 Ark. 267 (per curiam); *Wilburn v. State*, 2011 Ark. 237 (per curiam); *Robertson v. State*, 2010 Ark. 300 (per curiam); *DeLoach v. State*, 2010 Ark. 79 (per curiam) (citing *Womack v. State*, 368 Ark. 341, 245 S.W.3d 154 (2006) (per curiam)). Appellant's claims of ineffective assistance of counsel should have been raised in a petition filed in the trial court within ninety days of the date that the judgment was entered on a plea of guilty in accordance with Rule 37.2(c). *See Biddle v. State*, 2011 Ark. 358 (per curiam). Time limitations imposed in Rule 37.2(c) are jurisdictional in nature, and, if they are not met, a trial court lacks jurisdiction to grant postconviction relief. *Wright v. State*, 2011 Ark. 356 (per curiam); *Miller v. State*, 2011 Ark. 344 (per curiam); *McLeod v. State*, 2010 Ark. 95 (per curiam); *Shaw v. State*, 363 Ark. 156, 211 S.W.3d 506 (2005).

To the extent that appellant's petition could be considered an assertion that the State or the Arkansas Department of Correction had deliberately miscalculated the length of time appellant was required to serve under the judgment-and-commitment order, Arkansas Code Annotated section 16-90-111 does not provide a remedy to correct such errors. *See Johnson v. State*, 2012 Ark. 212.

Appeal dismissed; motions moot.

Jeffery L. Talley, pro se appellant.

No response.