

SUPREME COURT OF ARKANSAS

No. CR 12-895

IVORY PURIFOY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered January 31, 2013

PRO SE MOTION FOR EXTENSION
OF BRIEF TIME AND MOTION TO
COMPEL [PULASKI COUNTY
CIRCUIT COURT, 60CR 96-1346, 60CR
96-871, HON. WENDELL GRIFFEN,
JUDGE]APPEAL DISMISSED; MOTIONS
MOOT.**PER CURIAM**

In 1996, appellant Ivory Purifoy entered a plea of guilty to multiple felony offenses. An aggregate sentence of 720 months' imprisonment was imposed. In 2012, appellant filed in the trial court a pro se petition to correct an illegal sentence pursuant to Arkansas Code Annotated section 16-90-111 (Supp. 1997). The petition was denied, and appellant lodged an appeal in this court from the order. He now seeks an extension of time to file his brief-in-chief and an order compelling the circuit clerk to comply with his request for a copy of certain documents related to the 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. *Hickman v. State*, 2012 Ark. 359 (per curiam); *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).

In the petition, appellant alleged that he was unaware at the time he entered the guilty plea of the amount of time he would be required to serve before becoming eligible for parole, a factual basis for the plea was not established at the plea hearing, and he was not afforded effective assistance of counsel. He contended that he was denied due process of law and equal protection of law. Appellant attributed his failure to file a timely petition to withdraw the plea pursuant to Arkansas Rule of Criminal Procedure 37.1 (1996) to his lack of knowledge and understanding of his rights and the rigors of incarceration. In its order, the trial court held that the petition amounted to an untimely petition for postconviction relief under Rule 37.1 and denied relief.

Whether the petition was one under Rule 37.1 or under the statute, it was not timely filed, and the trial court did not therefore err in denying it. To the extent that a claim under section 16-90-111 conflicts with the time limitations for postconviction relief on a petition under Rule 37.1, the statute has been superseded. *Hickman*, 2012 Ark. 359; *Talley v. State*, 2012 Ark. 314 (per curiam). 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. *Gonder v. State*, 2011 Ark. 248, ___ S.W.3d ___ (per curiam). To the extent that appellant's claims were cognizable under Rule 37.1, appellant's request for relief was properly treated as a petition under Rule 37.1 and was subject

to the time limitations contained in the rule. *Lambert v. State*, 2012 Ark. 310 (per curiam).

Appellant alleged in the petition that his sentence was illegal, but the grounds stated in the petition were founded on claims of error in the plea proceeding, including allegations of due-process and equal-protection violations, and ineffective assistance of counsel. As those claims, as alleged by appellant, were cognizable in a Rule 37.1 petition, the allegations were subject to the time limitations in Arkansas Rule of Criminal Procedure 37.2(c). *See Hickman*, 2012 Ark. 359 (citing *Talley*, 2012 Ark. 314). Rule 37.2(c) requires that, where an appellant entered a plea of guilty, a petition must be filed within ninety days of the date that the judgment was entered-of-record. Ark. R. Crim. P. 37.2(c)(i). The judgment in appellant's case was entered in 1996, approximately sixteen years before he filed the petition. Accordingly, the petition was untimely as to any claims cognizable under Rule 37.1.

To the extent that any of appellant's claims were not cognizable under Rule 37.1, the claims did not allege the type of error required to support a claim of an illegal sentence. *See Lambert*, 2012 Ark. 310. Rather, appellant's claims appear to have been assertions that the sentence was imposed in an illegal manner, not that the sentence imposed was illegal. *Id.* Section 16-90-111(a) indicates that a circuit court may correct a sentence imposed in an illegal manner within the time allowed under the statute for a reduction of sentence, and section 16-90-111(b)(1) requires that an order under the statute that reduces a sentence must be entered within ninety days after the sentence is imposed on a plea of guilty. Ark. Code Ann. § 16-90-111; *see also Reynolds v. State*, 2011 Ark. 5 (per curiam). Appellant's petition was therefore not timely filed under the statute for purposes of any claims that may not have been cognizable under Rule 37.1.

Because appellant's petition was not timely filed under either Rule 37.1 or section 16-90-111, the trial court did not err in denying it.

Appeal dismissed; motions moot.

Ivory Purifoy, pro se appellant.

No response.