

David PARDUE *v.* STATE of Arkansas

99-841

999 S.W.2d 198

Supreme Court of Arkansas  
Opinion delivered September 23, 1999

1. APPEAL & ERROR — APPEAL FROM DENIAL OF POSTCONVICTION RELIEF — WHEN DENIED. — An appeal of the denial of postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail.
2. HABEAS CORPUS — NO BASIS FOR APPELLANT TO FILE PETITION FOR WRIT — CIRCUIT COURT DID NOT HAVE JURISDICTION. — There was no basis for appellant to file a petition for writ of habeas corpus in the trial court because he was not incarcerated as a direct result of that conviction when he filed the petition; moreover, he was not in custody in the county where the petition was filed, and was in fact incarcerated in a federal prison in another state; even if the sentence imposed in Arkansas had not been exhausted, a circuit court does not have jurisdiction to release on a writ of habeas corpus

a prisoner not in custody in that court's jurisdiction; the motion was denied and the appeal dismissed.

Pro Se Motion to Supplement Record and to Proceed *Informa Pauperis*; denied and appeal dismissed.

*Appellant, pro se.*

No response.

**P**ER CURIAM. In 1987, David Pardue was found guilty by a jury of robbery and sentenced to five years' imprisonment. The court of appeals affirmed. *Pardue v. State*, CACR 88-127 (August 30, 1989). In 1998, Pardue filed in the trial court in Benton County a petition for writ of habeas corpus challenging the judgment. The petition was denied, and the record on appeal from the order has been lodged here. Appellant Pardue now seeks by motion to supplement the record and to proceed as an indigent.

[1] The motion is denied, and the appeal dismissed as it is clear that the appellant could not succeed on appeal. This court has consistently held that an appeal of the denial of postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996); *Harris v. State*, 318 Ark. 599, 887 S.W.2d 514 (1994); *Reed v. State*, 317 Ark. 286, 878 S.W.2d 376 (1994); see *Chambers v. State*, 304 Ark. 663, 803 S.W.2d 932 (1991); *Johnson v. State*, 303 Ark. 560, 798 S.W.2d 108 (1990); *Williams v. State*, 293 Ark. 73, 732 S.W.2d 456 (1987).

[2] There was no basis for appellant to file a petition for writ of habeas corpus in the trial court in 1998. First, he was not incarcerated as a direct result of the 1987 conviction, for which a term of five years' imprisonment had been imposed, when he filed in the petition. Moreover, he did not contend that he was in custody in Benton County when he filed the petition there, and the Certificate of Service reflected that he was in fact incarcerated in a federal prison in Texas, apparently as a result of another conviction. Even if the five-year sentence imposed in 1987 had not been

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exhausted, a circuit court does not have jurisdiction to release on a writ of habeas corpus a prisoner not in custody in that court's jurisdiction. *Mackey v. Lockhart*, 307 Ark. 321, 819 S.W.2d 702 (1991).

Motion denied and appeal dismissed.

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