



Steven Samples v. State of Arkansas

2012 Ark. 146 (2012) | Cited 0 times | Supreme Court of Arkansas | April 5, 2012

Cite as

APPEAL DISMISSED.

Appellant Steven Samples appeals from the circuit court's order denying his motion to correct clerical mistake in his commitment order. On December 2, 2009, a judgment-and-commitment order was entered reflecting Samples's negotiated plea of guilty to six charges, consisting of four counts of delivery of a controlled substance, methamphetamine; possession of a controlled substance with intent to deliver, marijuana; and possession of a controlled substance, methamphetamine. He was sentenced to 300 months' imprisonment to be served concurrently with a sentence from a Washington County conviction. The judgment specified a date of "9-10-08, entered nunc pro tunc with Washington County #07-2125-1." The circuit court denied appellant's motion to correct due to lack of jurisdiction, and appellant brings this appeal. We dismiss the appeal for lack of jurisdiction.

In his motion, appellant asserted that, while his plea agreement included the judgment be nunc pro tunc, the date specified in the judgment-and-commitment order was incorrect. Specifically, he claimed that because his Washington County judgment entered December 5, 2008, specified "NUNC PRO TUNC TO MARCH 6, 2008," his Benton County judgment should have reflected that same date, rather than the date of September 10, 2008. Notwithstanding his claim, we must dismiss his appeal.

A circuit court may correct a mere clerical error in a judgment at any time; however, a motion to correct a judgment that is based on a substantive claim, such as that the sentence imposed did not conform to the plea agreement, falls within the purview of Arkansas Rule of Criminal Procedure 37.1 (2010). Here, appellant's motion did not assert a mere clerical error, but instead asserted that the date reflected on the Benton County judgment did not conform with the agreement he reached in pleading guilty. Therefore, the circuit court properly treated appellant's motion as one seeking post-conviction relief.

Arkansas Rule of Criminal Procedure 37.2(c) provides, in pertinent part, that, following a plea of guilty, a petition seeking post-conviction relief must be filed within ninety days of the date of entry of judgment. The time limitations imposed by Rule 37.2(c) are jurisdictional in nature, and if they are not met, the trial court lacks jurisdiction to consider a Rule 37.1 petition. *Trice v. State*, 2011 Ark. 74 (per curiam). A review of the record in the instant case reflects that Samples's judgment was entered December 2, 2009; however, he did not file his post-conviction motion to correct until more than one



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year later, on December 20, 2010. As such, the circuit court lacked jurisdiction to consider it. Where, as here, the circuit court lacks jurisdiction, the appellate court also lacks jurisdiction. *Sims v. State*, 2011 Ark. 135 (per curiam). Accordingly, we dismiss the appeal for lack of jurisdiction.

Appeal dismissed.

