

FORMAL ORDER

FILED
AT 10:00 O'CLOCK A M
FEB 01 2021

DIANE BOWMAN
LEE COUNTY CIRCUIT CLERK
MARIANNA, ARKANSAS

STATE OF ARKANSAS,)
)
) SCT.
SUPREME COURT)

BE IT REMEMBERED, THAT A SESSION OF THE SUPREME COURT
BEGUN AND HELD IN THE CITY OF LITTLE ROCK, ON JANUARY 28, 2021,
AMONGST OTHERS WERE THE FOLLOWING PROCEEDINGS, TO-WIT:

SUPREME COURT CASE NO. CV-20-267

LANCE MITCHELL OWENS

APPELLANT

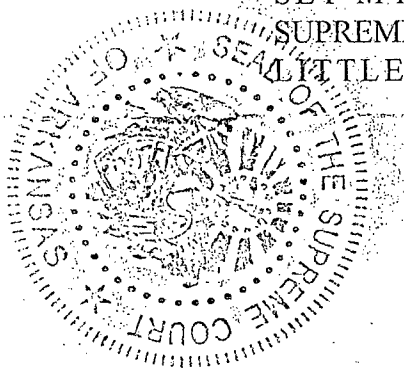
V. APPEAL FROM LEE COUNTY CIRCUIT COURT – 39CV-20-6

DEXTER PAYNE, DIRECTOR, ARKANSAS DEPARTMENT
OF CORRECTION

APPELLEE

APPELLANT'S PRO SE PETITION FOR REHEARING IS DENIED. WEBB, J., NOT
PARTICIPATING.

IN TESTIMONY, THAT THE ABOVE IS A TRUE COPY OF
THE ORDER OF SAID SUPREME COURT, RENDERED IN
THE CASE HEREIN STATED, I, STACEY PECTOL,
CLERK OF SAID SUPREME COURT, HEREUNTO
SET MY HAND AND AFFIX THE SEAL OF SAID
SUPREME COURT, AT MY OFFICE IN THE CITY OF
LITTLE ROCK, THIS 28TH DAY OF JANUARY, 2021.



Stacey Pectol

CLERK

BY: _____

DEPUTY CLERK

ORIGINAL TO CLERK

CC: LANCE MITCHELL OWENS
MICHAEL ZANGARI, ASSISTANT ATTORNEY GENERAL

IN THE ARKANSAS SUPREME COURT

LANCE MITCHELL OWENS

APPELLANT

VS.

CASE NO. CV-20-267

DEXTER PAYNE, DIRECTOR
Arkansas Division of Correction

APPELLEE

RESPONSE TO *PRO SE* PETITION FOR REHEARING

Comes now the appellee, by and through counsel, Leslie Rutledge, Attorney General, and Michael Zangari, Assistant Attorney General, and for his response, states:

1. On December 10, 2020, this Court unanimously affirmed the denial of Appellant's *pro se* habeas petition challenging his 2002 guilty pleas to kidnapping and first-degree murder. *Owens v. Payne*, 2020 Ark. 413, at 1-4.
2. On appeal, Appellant argued, in part, that the sentence imposed for first-degree murder was illegal pursuant to Ark. Code Ann. § 16-90-804 (Supp. 1999) because his judgment-and-commitment order did not include written reasons for a departure from the sentencing guidelines and that it exceeded the punishment allowed by law. *See Owens*, 2020 Ark. 413, at 1, 3. In response, the appellee

countered that Appellant's judgment reflected a valid sentence for first-degree murder. *See* Appellee Arg. 2-4.

3. In its opinion, this Court rejected Appellant's illegal-sentence claims and unanimously denied him habeas relief. *Owens*, 2020 Ark. 413, at 1-4. Specifically, this Court noted that transcript from his murder plea "demonstrate[d]" Appellant's understanding that the State was recommending a life sentence and determined that Ark. Code Ann. § 16-90-804's requirements were inapplicable, given that "he agreed to [the sentence] before entering his plea[.]" *Id.*, 2020 Ark. 413, at 2-4. Lastly, this Court held that trial court had imposed a statutorily authorized sentence for the crime of first-degree murder. *Id.*, 2020 Ark. 413, at 4.

4. Appellant now seeks rehearing pursuant to Ark. Sup. Ct. R. 2-3(g) (2019), arguing that this Court committed an error of law by holding that Ark. Code Ann. § 16-90-804 did not apply to his plea and enforcing the "illegal agreement." Pet. 1-

3. Because this Court addressed and properly rejected Appellant's habeas claims on appeal, his request for rehearing should be denied.

5. Pursuant Ark. Sup. Ct. R. 2-3(g), an appellant requesting "rehearing should . . . call attention to specific errors of law . . . which the opinion is thought to contain." However, such a petition "is *not* intended to afford an opportunity for a mere repetition of [an] argument already considered[.]" *id.* (emphasis added), and requires an appellant to demonstrate an error of law contained within the opinion.

See generally Johnson v. State, 2020 Ark. 86, at 1-2 (denying rehearing of habeas petitioner's novel claims).

6. Here, Appellant merely repeats his arguments on appeal that his life-sentence was facially illegal and that Ark. Code Ann. § 16-90-804's requirements applied to his plea. However, this Court found that Appellant's life-sentence fell within the "*permitted* statutory range for first-degree murder" and that Ark. Code Ann. § 16-90-804's requirements "d[id] not apply." *Owens*, 2020 Ark. 413, at 4 (emphasis added). Moreover, Appellant fails to cite any persuasive authority to contradict the well-established precedent relied upon in the decision, *id.*, 2020 Ark. 413, at 4, and this Court need not reconsider his claim. *See, e.g., Johnson*, 2020 Ark. 86, at 1-2 (denying rehearing for habeas "arguments that were considered and rejected on appeal.").

7. Accordingly, Appellant's petition fails to show any legal errors to warrant rehearing pursuant to Ark. Sup. Ct. R. 2-3(g), and, thus, should be denied.

WHEREFORE, the appellee respectfully prays that this Court deny Appellant's *pro se* petition for rehearing.

Respectfully submitted,

LESLIE RUTLEDGE
Attorney General

BY: /s/Michael Zangari
MICHAEL ZANGARI
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ATTORNEYS FOR APPELLEE

CERTIFICATE OF SERVICE

I, Michael Zangari, certify that on December 30, 2020, the foregoing document has been mailed, by United States Postal Service, postage prepaid, to:

Mr. Lance M. Owens
ADC#610855
East AR Regional Unit
PO Box 970
Marianna, AR 72360

/s/ Michael Zangari
MICHAEL ZANGARI

ARKANSAS SUPREME COURT

Lance Mitchell Owens

Appellant

v.

No. CV-20-267

D. Payne, Director, ADC

Appellee

PETITION FOR REHEARING

Comes now Appellant, Lance Mitchell Owens, and for his Petition for Rehearing, states :

On December 10, 2020, this Court affirmed the denial of Appellant's petition for writ of habeas corpus by the Lee County Circuit Court. That affirmance is in error because this Court :

1. Relies on a statutory sentencing range that is expressly prohibited by Arkansas statutory law ;
2. Relies on that illegal sentencing range when holding that Appellant "failed to demonstrate that his sentence is illegal" ;
3. Relies on Appellant's unlawful guilty plea agreement as authorization for what is an expressly illegal sentence; and,
4. Failed to address Appellant's issues because of its reliance on an illegal sentencing range.

FACTS

A.C.A. § 16-90-803 is the controlling sentencing statute in the case at bar. It's mandatory language commands mandatory compliance, and the sentences it recommends supersede those set out in other statutes. ("When a person ... enters a plea of guilty ... sentencing SHALL follow the procedures provided in this chapter." A.C.A. § 16-90-803(a)(1)(A), (emphasis added.) "Shall" means "mandatory compliance". Hobbs v. Gordon, 434 S.W.3d 364 @ 370.) To clarify - A.C.A. § 16-90-803 expressly prohibits sentencing that utilizes the range set out in the first-degree murder statute, therefore, this Court's reliance upon the range set out in the first-degree murder statute is erroneous.

A court of law cannot enforce an unlawful agreement. The plea agreement entered into by Appellant is unlawful because it imposes a sentence that is expressly prohibited by Arkansas statutory law. By holding that the applicable sentencing statute doesn't apply because Appellant entered a "plea of guilty", this Court is enforcing an illegal agreement. (See: Opinion, pg. 4)

This Court erred by relying on a sentencing range made void by A.C.A. § 16-90-803. Because of this error, the Court did not address the issues raised by Appellant.

CONCLUSION

This Court's decisions in this case are based on error. In making it's decisions, this Court relied on sentencing law not applicable to the case. As a result of this error, the Court could not make informed decisions in this case and could not determine the lawfulness of the Appellant's sentence.

Under the controlling sentencing statute, Appellant's sentence is illegal. The inclusion of the illegal sentence in Appellant's plea agreement makes the plea agreement illegal, and this Court erred by holding the illegal plea agreement as valid justification for what is in fact expressly prohibited by law.

These issues raised by Appellant were not addressed by this Court and have never been addressed by a court of law.

For the reasons set out herein, Appellant's Petition for Rehearing should be granted and/or a hearing set on the issues raised.

Respectfully submitted,

Lance Mitchell Owens

Lance Mitchell Owens

610855

P.O. Box 600

Grady, Ar 71644

APPENDIX B

MANDATE
AFFIRMED

FILED
AT 10:00 O'CLOCK A M
FEB 01 2021

DIANE BOWMAN
LEE COUNTY CIRCUIT CLERK
MARIANNA, ARKANSAS

PROCEEDINGS OF DECEMBER 10, 2020

SUPREME COURT CASE NO. CV-20-267

LANCE MITCHELL OWENS

APPELLANT

V. APPEAL FROM LEE COUNTY CIRCUIT COURT
(39CV-20-6)

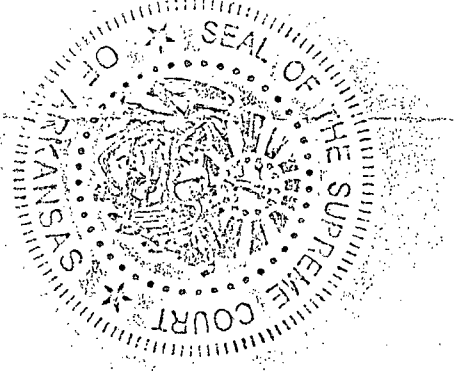
DEXTER PAYNE, DIRECTOR, ARKANSAS DEPARTMENT
OF CORRECTION

APPELLEE

THIS POST CONVICTION CIVIL APPEAL WAS SUBMITTED TO THE
ARKANSAS SUPREME COURT ON THE RECORD OF THE LEE COUNTY CIRCUIT
COURT AND BRIEFS OF THE RESPECTIVE PARTIES. AFTER DUE CONSIDERATION,
IT IS THE DECISION OF THE COURT THAT THE JUDGMENT OF THE CIRCUIT COURT
IS AFFIRMED.

HART, J., CONCURS.

IN TESTIMONY, THAT THE ABOVE IS A TRUE AND CORRECT COPY OF THE
JUDGMENT OF THE ARKANSAS SUPREME COURT, I, STACEY PECTOL,
CLERK, SET MY HAND AND AFFIX MY OFFICIAL SEAL, ON THIS 28TH DAY
OF JANUARY, 2021.




STACEY PECTOL, CLERK

SUPREME COURT OF ARKANSAS

No. CV-20-267

LANCE MITCHELL OWENS

APPELLANT

V.

DEXTER PAYNE, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION

APPELLEE

Opinion Delivered: December 10, 2020

PRO SE APPEAL FROM THE LEE
COUNTY CIRCUIT COURT
[NO. 39CV-20-6]

HONORABLE RICHARD L.
PROCTOR, JUDGE

AFFIRMED.

COURTNEY RAE HUDSON, Associate Justice

Appellant Lance Mitchell Owens appeals the circuit court's denial of his pro se petition for writ of habeas corpus filed pursuant to Arkansas Code Annotated sections 16-112-101 to -123 (Repl. 2016). Owens filed his petition in Lee County where he is currently incarcerated. Owens alleged below and reasserts on appeal that his sentence is illegal because it exceeded the presumptive sentence for the crime of first-degree murder to which he pleaded guilty. Owens argues that the failure to attach to the judgment and commitment order Owens's written reasons for the departure from the presumptive sentence rendered his sentence illegal pursuant to Arkansas Code Annotated section 16-90-804 (Supp. 1999).¹ We affirm.

¹In his petition filed in the circuit court, Owens raised a double-jeopardy claim but states in his brief-in-chief that "[a]ppellant believes he was mistaken about the double-jeopardy claim and will not pursue the claim further." Claims that are not raised on appeal are considered abandoned. *Cave v. State*, 2020 Ark. 156, 598 S.W.3d 506.

On September 6, 2002, Owens pleaded guilty in Madison County to first-degree murder in case number 44CR-01-54 and to kidnapping that was committed in Washington County in case number 72CR-01-1050. Owens waived venue and pleaded guilty to kidnapping the victim in Washington County and murdering her in Madison County. Owens was sentenced to life imprisonment for first-degree murder and to thirty years' imprisonment for kidnapping, which was imposed to run concurrently. As part of the negotiated plea agreement, the offense of capital murder was reduced to first-degree murder. The transcript of the plea hearing that is included in the record demonstrates that Owens and his codefendant admitted that they kidnapped the victim in Washington County where she was bound and gagged and held for several days before being driven to Madison County where she was strangled and thrown into Beaver Lake. The transcript of the hearing also shows that Owens and his codefendant understood that they would be sentenced to life imprisonment as part of the negotiated plea deal, which reduced the charge of capital murder to that of first-degree murder. Owens was asked by his trial counsel if he understood that his sentence to life imprisonment meant life, and Owens replied in the affirmative.

A writ of habeas corpus is proper when a judgment and commitment order is invalid on its face or when a trial court lacked jurisdiction over the cause. *Foreman v. State*, 2019 Ark. 108, 571 S.W.3d 484. Jurisdiction is the power of the court to hear and determine the subject matter in controversy. *Baker v. Norris*, 369 Ark. 405, 255 S.W.3d 466 (2007). When the trial court has personal jurisdiction over the appellant and also has jurisdiction over the subject matter, the court has authority to render the judgment. *Johnson v. State*, 298 Ark. 479, 769 S.W.2d 3 (1989).

Madison County Circuit Court is illegal because the order does not abide by the requirements set forth in Arkansas Code Annotated section 16-90-804 (Supp. 1999).²

Owens received a sentence that he agreed to before entering his plea of guilty, and under those circumstances, section 16-90-804 does not apply. See *Waller v. Kelley*, 2016 Ark. 252, 493 S.W.3d 757; see also *Redus v. State*, 2013 Ark. 9 (per curiam) (When a habeas petitioner has accepted a negotiated plea, we do not look beyond the permitted statutory range of punishment in determining, whether the sentence was valid.). The transcript of the plea hearing demonstrates that in exchange for the guilty plea, the prosecutor recommended a thirty-year sentence for kidnapping and life imprisonment for first-degree murder and that Owens understood the sentencing recommendation when he pleaded guilty. The permitted statutory range for first-degree murder, which is a Class Y felony, is not less than ten years and not more than forty years, or life. See Ark. Code Ann. §§ 5-4-401, 5-10-102 (Repl. 1997). In view of the above, Owens has failed to state a claim for issuance of a writ of habeas corpus because he has failed to demonstrate that his sentence is illegal on its face.

Affirmed.

HART, J., concurs.

²Arkansas Code Annotated section 16-90-804 was originally enacted by Acts 532 and 550 of 1993 and was amended by Act 1170 of 1995. These Acts codified at section 16-90-804 appear in the 1997 and 1999 supplements to Title 16 of the Arkansas Code and include the 1995 amendments to the original Acts of 1993.