

Cite as 2011 Ark. 55

SUPREME COURT OF ARKANSAS

No. CR 10-1087

SHAHID OMAR
Petitioner

v.

STATE OF ARKANSAS
Respondent**Opinion Delivered** February 9, 2011PRO SE MOTION FOR BELATED
APPEAL OF ORDER [CIRCUIT
COURT OF CRAWFORD COUNTY, CR
2005-491, HON. GARY COTTRELL,
JUDGE]

MOTION DENIED.

PER CURIAM

In 2006, petitioner Shahid Omar was found guilty by a jury of possession of a controlled substance with intent to deliver and possession of drug paraphernalia. An aggregate sentence of 720 months' imprisonment was imposed. The Arkansas Court of Appeals affirmed. *Omar v. State*, 99 Ark. App. 436, 262 S.W.3d 195 (2007).

Appellant subsequently filed a timely pro se petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure Rule 37.1 (2007). The trial court denied the petition after a hearing, and this court affirmed. *Omar v. State*, 2009 Ark. 337 (unpublished per curiam).

On February 18, 2010, petitioner filed a second Rule 37.1 petition. The court denied the petition on the ground that it was untimely filed. Petitioner did not file a notice of appeal within thirty days as required by Arkansas Rule of Appellate Procedure—Criminal 2(a)(4) (2010). Petitioner now seeks leave to proceed with a belated appeal of the order.

Cite as 2011 Ark. 55

We need not consider petitioner's reasons for failing to perfect an appeal because it is clear from the record that the Rule 37.1 petition was not timely filed in the trial court and that it was an unauthorized second petition under the rule. 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. *Coleman v. State*, 2010 Ark. 490 (per curiam); *Gardner v. State*, 2010 Ark. 344 (per curiam); *Harris v. State*, 2010 Ark. 314 (per curiam); *Crawford v. State*, 2010 Ark. 313 (per curiam); *Robertson v. State*, 2010 Ark. 300, ___ S.W.3d ___ (per curiam); *Carter v. State*, 2010 Ark. 231, ___ S.W.3d ___ (per curiam); *Gray v. State*, 2010 Ark. 216 (per curiam); see *Morgan v. State*, 2010 Ark. 504 (per curiam); *Tillman v. State*, 2010 Ark. 103 (per curiam); *Pierce v. State*, 2009 Ark. 606 (per curiam); *Grissom v. State*, 2009 Ark. 557 (per curiam); see also *Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (per curiam); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (per curiam).

Rule 37.1(b) does not allow for a subsequent petition to be filed under the rule unless the original pleading was denied without prejudice to filing a second petition. When petitioner's first petition was denied, he was not granted leave to proceed with a subsequent petition. Accordingly, the second petition was subject to dismissal on that basis. See *Carter v. State*, 2010 Ark. 349 (per curiam); see also *Halfacre v. State*, 2010 Ark. 377 (per curiam).

Moreover, even if petitioner had not already proceeded under the rule, the petition filed February 18, 2010, was not timely filed. Pursuant to Arkansas Criminal Procedure Rule 37.2(c), if an appeal was taken, a petition under the rule must be filed in the circuit court within sixty days of the date the mandate was issued by the appellate court. The February 18, 2010 petition

Cite as 2011 Ark. 55

was filed approximately twenty-seven months after the mandate was issued on affirmance of the appeal in his case. Time limitations imposed by Rule 37.2(c) are jurisdictional in nature, and a circuit court cannot grant relief on an untimely petition. *Gardner v. State*, 2010 Ark. 344 (per curiam); *DeLoach v. State*, 2010 Ark. 79 (per curiam) (citing *Maxwell v. State*, 298 Ark. 329, 767 S.W.2d 303 (1989)); *Lauderdale v. State*, 2009 Ark. 624 (per curiam); see also *Croft v. State*, 2010 Ark. 83. This court likewise lacks jurisdiction to reach the merits of an appeal pertaining to an untimely petition. *Gardner*, 2010 Ark. 344; *Wilmoth v. State*, 2010 Ark. 315 (per curiam); *Carter*, 2010 Ark. 231, ___ S.W.3d ___; see also *Lawhon v. State*, 328 Ark. 335, 942 S.W.2d 864 (1997) (per curiam).

Motion denied.