

SUPREME COURT OF ARKANSAS

No. CR 11-838

MYKA TALLEY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered November 17, 2011

PRO SE MOTION FOR EXTENSION
OF TIME TO FILE BRIEF [MILLER
COUNTY CIRCUIT COURT, CR 2008-
501, HON. KIRK JOHNSON, JUDGE]APPEAL DISMISSED; MOTION
MOOT.**PER CURIAM**

In 2009, appellant Myka Talley was found guilty by a jury of kidnapping and seven counts of rape. He was sentenced to eight consecutive terms of life imprisonment. We affirmed. *Talley v. State*, 2010 Ark. 357, ___ S.W.3d ___. This court's mandate issued on October 28, 2010.

On Tuesday, December 28, 2010, sixty-one days after the mandate issued, appellant filed in the trial court a pro se petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2010).¹ The trial court denied the petition, and appellant has lodged an appeal in this court from the order. Appellant now seeks by pro se motion an extension of time to file his brief-in-chief.

We need not address the merits of the motion because it is clear from the record that appellant could not prevail on appeal if the appeal were permitted to go forward. Accordingly,

¹We take judicial notice that the Circuit Clerk of Miller County has verified that the clerk's office in Miller County was open for regular business on Monday, December 27, 2010.

the appeal is dismissed, and the motion is moot. An appeal from an order that denied a petition for postconviction relief will not be permitted to proceed where it is clear that the appellant could not prevail. *Grant v. State*, 2011 Ark. 309 (per curiam); *Lewis v. State*, 2011 Ark. 176 (per curiam); *Kelley v. State*, 2011 Ark. 175 (per curiam); *Morgan v. State*, 2010 Ark. 504 (per curiam); *Goldsmith v. State*, 2010 Ark. 158 (per curiam); *Watkins v. State*, 2010 Ark. 156, ___ S.W.3d ___ (per curiam); *Meraż v. State*, 2010 Ark. 121 (per curiam); *Smith v. State*, 367 Ark. 611, 242 S.W.3d 253 (2006) (per curiam).

The petition filed in the trial court was not timely filed. When a judgment is affirmed on appeal, a petitioner under the rule is required, pursuant to Arkansas Rule of Criminal Procedure 37.2(c), to file his or her petition with the clerk of the trial court within sixty days of the date the mandate was issued following affirmance of the judgment in the case. Appellant did not timely file his petition, and, thus, the petition was subject to dismissal.

Time limitations imposed in Rule 37.2(c) for filing a petition are jurisdictional in nature. *Wright v. State*, 2011 Ark. 356 (per curiam). If the time limitations are not met, a trial court lacks jurisdiction to consider a Rule 37.1 petition. *Id.*; *Sims v. State*, 2011 Ark. 135 (per curiam); *Trice v. State*, 2011 Ark. 74 (per curiam) (citing *Mills v. State*, 2010 Ark. 390 (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). Where the circuit court lacks jurisdiction, the appellate court also lacks jurisdiction. *Clemons v. State*, 2011 Ark. 345 (per curiam); *Grant*, 2011 Ark. 309; *Daniels v. Hobbs*, 2011 Ark. 249 (per curiam); *see also Clark v. State*, 362 Ark. 545, 210 S.W.3d 59 (2005) (citing *Priest v. Polk*, 322 Ark. 673, 912 S.W.2d 902 (1995)).

Appeal dismissed; motion moot.