

SUPREME COURT OF ARKANSAS

No. CR 12-780

JON MILLS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered February 7, 2013

PRO SE MOTION FOR BELATED
APPEAL SEEKING TO FILE
BELATED BRIEF [SALINE COUNTY
CIRCUIT COURT, CR 94-378, HON.
GARY M. ARNOLD, JUDGE]

APPEAL DISMISSED; MOTION
MOOT.

PER CURIAM

In 1995, appellant Jon Mills was found guilty by a jury of rape and sexual abuse and sentenced to an aggregate term of life imprisonment. We affirmed. *Mills v. State*, 321 Ark. 621, 906 S.W.2d 674 (1995).

More than seventeen years after he was convicted of the offenses, appellant filed in the trial court a pro se motion for new trial under Arkansas Rule of Civil Procedure 59 (2012). In the motion he contended that the evidence at his trial was insufficient to sustain the verdict, that the trial judge was not eligible to serve in that capacity, that he was denied his rights under several rules of criminal procedure, and that certain inadmissible evidence was introduced at trial.¹ The trial court denied the motion, and appellant has lodged an appeal here. He now seeks by pro se motion leave to file a belated brief-in-chief.

¹Appellant raised some of the same allegations in a pro se “Motion for Corruption” filed in the trial court in 2010. The motion was denied, and this court dismissed the appeal on the ground that the motion constituted an untimely request for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1. *Mills v. State*, 2010 Ark. 390 (per curiam).

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, the appeal is dismissed, and the motion is moot. The motion filed in the trial court raised issues that could have been settled at trial or in a timely petition for postconviction relief. As such, appellant could not prevail on appeal, and there is no good cause to proceed with the appeal. *See Crain v. State*, 2012 Ark. 412.

Appellant offered nothing to establish that Arkansas Rule of Civil Procedure 59 (2012), which allows a motion for new trial to be filed in a civil matter within ten days of the date the judgment is entered, was applicable to the judgment of conviction entered in his criminal case. Arkansas Rule of Criminal Procedure 33.3 (1995) sets the procedure for filing a motion for new trial in a criminal case. *See Robinson v. State*, 2010 Ark. 390. Rather, appellant's claims presented issues that should have been raised at trial and on the record on direct appeal. *See Evans v. State*, 2012 Ark. 375 (per curiam).

To the extent that any of the assertions raised in the motion for new trial could be considered as a collateral attack on the judgment and, thus, cognizable under our postconviction rule, Arkansas Rule of Criminal Procedure 37.1 (2012), the motion was untimely. Rule 37.2(c) provides that all grounds for postconviction relief must be raised in a petition under the rule filed within sixty days of the date that the appellate court's mandate affirming the judgment was issued. This court's mandate in the instant case was issued in 1995, and appellant was obligated to proceed under the rule within sixty days of that date. Time limitations imposed in Rule 37.2(c) are jurisdictional in nature, and, if they are not met, a trial court lacks jurisdiction to grant

postconviction relief. *Bates v. State*, 2012 Ark. 394 (per curiam); *Maxwell v. State*, 298 Ark. 329, 767 S.W.2d 303 (1989).

Appeal dismissed; motion moot.

Jon Mills, pro se appellant.

No response.