

SUPREME COURT OF ARKANSAS

No. CR 12-823

LISA MURPHY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered January 17, 2013

APPELLEE'S MOTIONS TO DISMISS APPEAL AND MOTION FOR EXTENSION OF TIME TO FILE BRIEF AND APPELLANT'S PRO SE MOTION TO SUPPLEMENT RECORD WITH NEW MATERIAL [HOT SPRING COUNTY CIRCUIT COURT, 30CR 09-217, HON. CHRIS E WILLIAMS, JUDGE]

APPELLEE'S MOTION TO DISMISS APPEAL GRANTED; APPELLEE'S MOTION FOR EXTENSION OF BRIEF TIME AND APPELLANT'S MOTION TO SUPPLEMENT THE RECORD MOOT.

PER CURIAM

On June 22, 2011, judgment was entered reflecting that appellant Lisa Murphy had entered a plea of guilty to delivery of a controlled substance, for which she was placed on probation for a period of 120 months. An amended judgment-and-commitment order was entered on June 29, 2011. A judgment-and-commitment order was subsequently entered on November 18, 2011, reflecting that appellant's probation had been revoked and that she had been sentenced to 132 months' imprisonment.

On March 9, 2012, which was more than eight months after the original and amended judgments had been entered and almost four months after the order revoking probation had been entered, appellant filed in the trial court a pro se petition for postconviction relief

pursuant to Arkansas Rule of Criminal Procedure 37.1 (2012). The petition was dismissed on the grounds that it was not timely filed and did not state a basis for granting postconviction relief.

Appellant lodged an appeal in this court from the order. Now before us are a motion to dismiss the appeal filed by the appellee State and a companion motion for extension of brief time in the event the motion to dismiss is not granted. Also before us is appellant's motion to supplement the record with new material.

The appellee's motion to dismiss the appeal is granted. The appellee's motion for extension of brief time and the appellant's motion to supplement the record are moot. It is plain from the record that the lower court did not err in holding that the petition was an untimely petition for postconviction relief.¹ An appeal from an order that denied a petition for postconviction relief will not be permitted to go forward where it is evident that the appeal must fail. *Martin v. State*, 2012 Ark. 312 (per curiam); *Watson v. State*, 2012 Ark. 27 (per curiam); *Riddell v. State*, 2012 Ark. 11 (per curiam); *Hendrix v. State*, 2012 Ark. 10 (per curiam); *Croft v. State*, 2010 Ark. 83 (per curiam); *Crain v. State*, 2009 Ark. 512 (per curiam). In this case, the circuit court did not have jurisdiction to consider appellant's Rule 37.1 petition because the petition was untimely.

Because appellant's conviction stemmed from a guilty plea, she was required to file a

¹Even if appellant had timely filed the petition, the motion to supplement the record would be subject to denial. It is axiomatic that new material may not be added to the record on appeal. A record-on-appeal must reflect the proceedings in the circuit court. New evidence cannot be added to the record on appeal, as this court does not consider material outside the record. *Miles v. State*, 350 Ark. 243, 85 S.W.3d 907 (2002).

Rule 37.1 petition within ninety days from the entry of judgment. Ark. R. Crim. P. 37.2(c)(i). The 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. *Talley v. State*, 2012 Ark. 314 (per curiam); *Tucker v. State*, 2012 Ark. 216; *Romero v. State*, 2012 Ark. 133 (per curiam); *Watson v. State*, 2011 Ark. 202 (per curiam); *Sims v. State*, 2011 Ark. 135 (per curiam); *Trice v. State*, 2011 Ark. 74 (per curiam); *O'Brien v. State*, 339 Ark. 138, 3 S.W.3d 332 (1999); *Benton v. State*, 325 Ark. 246, 925 S.W.2d 401 (1996). The petition before the trial court was not timely filed as to the original or the amended judgment-and-commitment orders or the revocation order, and, thus, the trial court had no jurisdiction to grant the relief sought. Where the circuit court lacks jurisdiction, the appellate court also lacks jurisdiction. *Hendrix*, 2010 Ark. 10; *Clemons v. State*, 2011 Ark. 345 (per curiam); *Grant v. State*, 2011 Ark. 309 (per curiam); *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)).

Appellee's motion to dismiss appeal granted; appellee's motion for extension of time to file brief and appellant's motion to supplement record with new material moot.

Lisa Murphy, pro se appellant.

Dustin McDaniel, Att'y Gen., by: *Valerie Glover Fortner*, Ass't Att'y Gen., for appellee.