

Cite as 2019 Ark. App. 102
ARKANSAS COURT OF APPEALS

No. CR-18-1005

EDWARD L. CAVE

APPELLANT

Opinion Delivered: February 13, 2019

GRANT COUNTY CIRCUIT COURT
[NO. 27CR-16-3]

V.

HONORABLE CHRIS E WILLIAMS,
JUDGE

STATE OF ARKANSAS

APPELLEE

APPELLEE'S MOTION TO DISMISS

MOTION GRANTED;
APPEAL DISMISSED

PER CURIAM

On May 4, 2016, the Grant County Circuit Court entered a judgment reflecting that Edward L. Cave had been found guilty of delivery of methamphetamine, delivery of oxycodone, and maintaining a drug premises. On April 5, 2017, this court affirmed Cave's convictions. *Cave v. State*, 2017 Ark. App. 212, 518 S.W.3d 134. The mandate was issued on April 25, 2017. On August 1, 2018, Cave filed a belated Rule 37 petition. On August 15, 2018, the circuit court dismissed the petition because it was not timely filed. On September 11, 2018, Cave appealed the circuit court's dismissal to this court. The State has filed a motion to dismiss the appeal for lack of jurisdiction.

Pursuant to Arkansas Rule of Criminal Procedure 37.2(c), when there is an appeal from a judgment of conviction, a petition for relief must be filed in the circuit court within

sixty days of the date that the mandate was issued by the appellate court. The time limitations imposed in Rule 37.2(c) are jurisdictional in nature, and if the petition is not filed within that period, a circuit 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). An appeal from an order that denied a petition for postconviction relief will not be allowed to proceed when it is clear that the appellant could not prevail. *Bates v. State*, 2012 Ark. 394 (per curiam); *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 Cave's Rule 37 petition because he did not file the petition within sixty days of the mandate. Specifically, the mandate was issued on April 25, 2017, and Cave filed his Rule 37 petition on August 1, 2018. When the circuit court lacks jurisdiction, the appellate court lacks jurisdiction. *Holliday v. State*, 2013 Ark. 47 (per curiam). Accordingly, we dismiss the appeal as it is evident from the record that Cave could not succeed on appeal.

Motion granted; appeal dismissed.