

Cite as 2011 Ark. 218

SUPREME COURT OF ARKANSAS

No. CR 11-207

JAMES BUTLER

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered May 12, 2011

PRO SE MOTIONS FOR
APPOINTMENT OF COUNSEL AND
FOR EXTENSION OF TIME TO FILE
BRIEF [GARLAND COUNTY
CIRCUIT COURT, CR 2008-268,
HON. JOHN HOMER WRIGHT,
JUDGE]

APPEAL DISMISSED; MOTIONS
MOOT.

PER CURIAM

In 2009, appellant James Butler was found guilty by a jury of two counts of rape and sentenced to two consecutive life sentences. We affirmed. *Butler v. State*, 2010 Ark. 259. This court's mandate was issued on June 15, 2010.

On November 23, 2010, appellant filed in the trial court a pro se petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2010). The petition was dismissed on the ground that it was not timely filed in accordance with the rule and thus the trial court was without jurisdiction to consider it on the merits. Appellant lodged an appeal here and now seeks by pro se motions appointment of counsel and an extension of time to file the appellant's brief-in-chief.

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We need not address the merits of the motions because it is clear from the record that appellant could not prevail on appeal if the appeal were permitted to go forward. The appeal is therefore dismissed, and the motions are 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. *Gilcrease v. State*, 2011 Ark. 108 (per curiam); *Wormley v. State*, 2011 Ark. 107 (per curiam); *Delamar v. State*, 2011 Ark. 87(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); *Meraz v. State*, 2010 Ark. 121 (per curiam); *Smith v. State*, 367 Ark. 611, 242 S.W.3d 253 (2006) (per curiam).

If a direct appeal is taken from a conviction and the conviction is affirmed on appeal, a Rule 37.1 petition must be filed within sixty days of the date the mandate was issued by the appellate court. Ark. R. Crim. P. 37.2(c). Time limitations imposed in Rule 37.2(c) are jurisdictional in nature, and if they are not met, a trial court lacks jurisdiction to consider a Rule 37.1 petition. *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).

Appellant filed his petition 161 days after the mandate issued. As such, the trial court was without jurisdiction to consider it, and dismissal for lack of jurisdiction was proper. *Sims*, 2011 Ark. 135. Where the circuit court lacks jurisdiction, the appellate court also lacks

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jurisdiction. *Id.*; 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)). Accordingly, the appeal is dismissed for lack of jurisdiction, and appellant's motions are moot.

Appeal dismissed; motions moot.