

SUPREME COURT OF ARKANSAS

No. 11-1167

JIMMY EDD LEE

APPELLANT

V.

ARKANSAS DEPARTMENT OF
CORRECTION RECORDS
DEPARTMENT and RAY HOBBS,
DIRECTOR, ARKANSAS
DEPARTMENT OF CORRECTION
APPELLEES

Opinion Delivered September 20, 2012

PRO SE MOTION FOR
APPOINTMENT OF COUNSEL
[APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT, 60CV
10-6937, HON. CHRISTOPHER
CHARLES PIAZZA, JUDGE]

APPEAL DISMISSED; MOTION
MOOT.

PER CURIAM

Appellant Jimmy Edd Lee pled guilty to possession of drug paraphernalia with the intent to manufacture methamphetamine, for which he was sentenced to five years' probation and fined \$2900. This probation was later revoked, and appellant was sentenced to twenty years' imprisonment in the Arkansas Department of Correction ("ADC"). The Arkansas Court of Appeals affirmed. *Lee v. State*, CACR 07-684 (Ark. App. Dec. 5, 2007) (unpublished). Appellant subsequently filed a petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2010) that was denied, and we affirmed. *Lee v. State*, 2010 Ark. 261 (per curiam).

On December 3, 2010, appellant filed in the Pulaski County Circuit Court a petition for judicial review pursuant to the Arkansas Administrative Procedure Act ("APA"), codified as Arkansas Code Annotated section 25-15-212 (Repl. 2002), seeking to have the circuit court alter the ADC's determination of appellant's parole-eligibility date and seeking

declaratory judgment that the application of certain sentencing statutes to appellant's sentence was illegal. The circuit court dismissed the petition, and appellant timely filed an appeal from that order.

Now before us is appellant's pro se motion for appointment of counsel. Because it is clear that appellant was untimely in seeking review under the APA, the appeal is dismissed, and his motion is moot.

Review of administrative agency decisions, by both the circuit court and the appellate court, is limited in scope. *Mountain Pure, LLC v. Little Rock Wastewater Util.*, 2011 Ark. 258, ___ S.W.3d ___. The appellate court's review is directed not toward the circuit court's decision, but toward the decision of the agency, as administrative agencies are better equipped to determine and analyze legal issues affecting their agencies. *See Chandler v. Ark. Appraiser Licensing & Certification Bd.*, 2011 Ark. 519, ___ S.W.3d ___ (citing *Staton v. Ark. State Bd. of Collection Agencies*, 372 Ark. 387, 277 S.W.3d 190 (2008)).

Under the APA, a petition for review must be filed within thirty days after service of the agency's final decision upon the petitioner. Ark. Code Ann. § 25-15-212(b). This thirty-day period begins to run when an inmate is served with a copy of the ADC's decision. *See Linell v. Norris*, 2009 Ark. 303; 320 S.W.3d 642 (per curiam). Where a petition is filed outside the thirty-day window, it is untimely, and a petitioner is precluded from seeking relief under the APA. *See id.* Appellant's petition for judicial review did not contain the ADC's official decision regarding appellant's parole-eligibility determination, but an ADC status-assignment sheet that appellant included with his petition states that his parole-eligibility date

was last determined by the ADC on July 31, 2009. Appellant's petition for judicial review was not filed until December 3, 2010, 491 days after the ADC's determination. His petition is, therefore, subject to dismissal by this court unless appellant meets his burden of rebutting the presumption that his petition was not timely filed. See *Linell*, 2009 Ark. 303, 320 S.W.3d 642.

In his brief on appeal, appellant argues that he did not know of the application of the sentencing statutes to his sentence "until within the thirty-day requirement when the petition was submitted." Appellant did not, however, plead any substantive facts to support this allegation. Conclusory statements such as those offered by appellant do not rebut a presumption against timeliness. See generally *Aaron v. State*, 2010 Ark. 249 (per curiam). Our review on appeal is limited to the record, and the only date contained in the record regarding the ADC's determination of appellant's parole eligibility is July 31, 2007. Based on this date, appellant's petition for review was untimely, and he is precluded from seeking relief under the APA. See *Linell*, 2009 Ark. 303, 320 S.W.3d 642. His motion for appointment of counsel in this matter is accordingly moot.

Appeal dismissed; motion moot.

BROWN, J., not participating.