

Cite as 2011 Ark. 267

SUPREME COURT OF ARKANSAS

No. CR 10-572

JACQUELYNE VELCOFF
Appellant

v.

STATE OF ARKANSAS
Appellee**Opinion Delivered** June 16, 2011PRO SE MOTION TO FILE
BELATED REPLY BRIEF [CLARK
COUNTY CIRCUIT COURT, CR
2003-187, HON. WILLIAM R.
WRIGHT, JUDGE]APPEAL DISMISSED; MOTION
MOOT.**PER CURIAM**

In 2005, appellant Jacquelyne Velcoff was found guilty by a jury of twenty counts of rape and sentenced to an aggregate term of 168 months' imprisonment. The Arkansas Court of Appeals affirmed. *Velcoff v. State*, CACR 05-950 (Ark. App. Nov. 8, 2006) (unpublished).

On March 22, 2010, appellant filed in the trial court a pro se petition to correct an illegal sentence pursuant to Arkansas Code Annotated § 16-90-111 (Repl. 2006). The petition was denied on the ground that it was not timely filed. Appellant filed a motion for reconsideration that was also denied. Appellant lodged an appeal in this court from the order that denied the motion for reconsideration, and now before us is her motion seeking to file a belated reply brief.

We need not consider the motion because it is clear from the record that the petition filed in the trial court was not timely filed. This court will not permit an appeal from an order

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that denied a petition for postconviction relief to go forward 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).

Arkansas Code Annotated § 16-90-111 has been superseded to the extent that it conflicts with the time limitations for postconviction relief under Arkansas Rule of Criminal Procedure Rule 37.1 (2011). *DeLoach v. State*, 2010 Ark. 79 (per curiam) (citing *Womack v. State*, 368 Ark. 341, 245 S.W.3d 154 (2006) (per curiam)). As the mandate of the court of appeals was issued in appellant's case on November 28, 2006, she was required to seek relief under the rule within sixty days from the date that the mandate was issued. Ark. R. Crim. P. 37.2(c) (2011); *Gardner v. State*, 2010 Ark. 344 (per curiam); *see also Washington v. State*, 2010 Ark. 345 (per curiam); *Lauderdale v. State*, 2009 Ark. 624 (per curiam); *State v. Wilmoth*, 369 Ark. 346, 255 S.W.3d 419 (2007). Appellant's petition to reduce her sentence was filed more than three years after the date that the mandate was issued. 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. *Gardner v. State*, 2010 Ark. 344; *DeLoach*, 2010 Ark. 79; *see also Holloway v. State*, 2010 Ark. 42 (per curiam) (citing *Maxwell v. State*, 298 Ark. 329, 767

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S.W.2d 303 (1989)); *Buckhanna v. State*, 2009 Ark. 490 (per curiam).¹ Also, Rule 37.1(b) does not allow for a subsequent petition unless the original pleading was denied without prejudice to filing a second petition. Appellant had not been granted leave to proceed again under Rule 37.1.

Appeal dismissed; motion moot.

¹Appellant filed a petition under Rule 37.1 in the trial court that was denied in 2007. Her appeal to this court from the denial of a motion for reconsideration in that matter was dismissed. See *Velcoff v. State*, CR 07-709 (Ark. Jan. 22, 2009) (per curiam).