

SUPREME COURT OF ARKANSAS

No. CR-15-549

DEWAYNE JOSLIN

PETITIONER

V.

STATE OF ARKANSAS

RESPONDENT

Opinion Delivered September 17, 2015

PRO SE MOTION FOR BELATED
APPEAL OF ORDER
[JACKSON COUNTY CIRCUIT
COURT, NOS. 34CR-13-108, 34CR-12-5,
34CR-10-81]HONORABLE HAROLD S. ERWIN,
JUDGEMOTION DISMISSED.**PER CURIAM**

Now before us is a pro se motion for belated appeal filed by petitioner Dewayne Joslin. The motion pertains to an order entered in the Jackson County Circuit Court on February 19, 2014, denying Joslin's pro se petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2015), which was filed on February 12, 2014. While the caption in the order refers to case nos. 34CR-13-108, 34CR-12-5, and 34CR-10-81, the body of the order pertains only to 34CR-13-108. The caption in the Rule 37.1 petition filed by Joslin also bears the three docket numbers, but it also pertains only to 34CR-13-108.

In the motion for belated appeal, Joslin states that he is under sentence on a judgment of conviction imposed after he appeared in the circuit court on June 27, 2013, which was the date that he appeared in court in 34CR-12-5. But, he also refers in the motion to having filed a notice of appeal on March 6, 2014, from the denial on February 18, 2014, of his petition for postconviction relief, which was the date the order denying relief in 34CR-13-108 was signed.

Cite as 2015 Ark. 328

(The record filed in this court with the motion does not contain a notice of appeal.) Joslin further contends in the motion for belated appeal that he was “wrongly sentenced on these cases,” and he asks in an affidavit appended to the motion that the judgments in the cases be “modified, remanded, or reversed.”

We find good cause to dismiss the motion for belated appeal because the Rule 37.1 petition that appears in the record, which was filed by Joslin on February 12, 2014, was not timely filed as to the judgment entered in any of Joslin’s three cases. For that reason, we need not consider the merits of the motion as it is clear from the record that Joslin could not prevail if an appeal were permitted to go forward. An appeal from an order that denied a petition for postconviction relief will not be allowed to proceed when the appellant could not prevail. *Justus v. State*, 2012 Ark. 91. When a Rule 37.1 petition is not timely filed, the trial court lacks jurisdiction to consider the petition. Accordingly, the trial court did not have jurisdiction to grant relief to Joslin in 34CR-13-108, 34CR-12-5, or 34CR-10-81. *See State v. Wilmoth*, 369 Ark. 346, 255 S.W.3d 419 (2007).

In 34CR-10-81, judgment was entered on June 1, 2010, reflecting that Joslin had entered a plea of guilty or nolo contendere to third-degree domestic battering for which a term of thirty-six months’ imprisonment was imposed with an additional term of sixty months’ imprisonment suspended. In 34CR-12-5, Joslin entered a plea of guilty in 2013 to third-degree domestic battering, second offense, and was placed on probation. Probation was subsequently revoked, and, on July 1, 2013, judgment was entered sentencing him to 180 months’ imprisonment. In 34CR-13-108, judgment was entered on September 19, 2013, reflecting that Joslin had entered

a plea of guilty to first-degree domestic battering and had been sentenced to 240 months' imprisonment.

The trial court correctly determined that Joslin's February 12, 2014 petition did not meet the time limitations on filing petitions set by Rule 37.2(c)(i). Under Rule 37.2(c)(i), when judgment is entered on a plea of guilty, or if there was no appeal from a judgment or order that could have been appealed, such as a revocation order, any petition for relief must be filed in the trial court within ninety days of the date that the judgment or order was entered. Again, the time limitations imposed in the Rule are jurisdictional in nature. *See Engram v. State*, 2013 Ark. 424, 430 S.W.3d 82. The February 12, 2014 petition filed by Joslin was not filed within the ninety-day period in any of his cases. When the trial court lacks jurisdiction to grant relief in a matter, the appellate court also lacks jurisdiction to consider an appeal. *Id.*

Motion dismissed.