

Cite as 2009 Ark. 492

SUPREME COURT OF ARKANSAS

No. CR 09-686

PAUL D. STUART
Appellant

v.

STATE OF ARKANSAS
Appellee**Opinion Delivered** October 8, 2009PRO SE MOTION FOR ACCESS TO
RECORD AND EXTENSION OF TIME
TO FILE APPELLANT'S BRIEF
[CIRCUIT COURT OF NEWTON
COUNTY, CR 2008-9, HON. JOHN
PUTMAN, JUDGE]APPEAL DISMISSED; MOTION
MOOT.**PER CURIAM**

A judgment entered on August 22, 2008,¹ reflects that appellant Paul D. Stuart entered negotiated pleas of guilty to charges of aggravated residential burglary, battery in the first degree, arson, possession of a firearm by a felon, and second-degree battery. The trial court imposed an aggregate sentence of 420 months' imprisonment in the Arkansas Department of Correction. On November 25, 2008, appellant filed in the trial court a petition under Arkansas Rule of Criminal Procedure 37.1 that was denied and dismissed as untimely. Appellant lodged an appeal of the order in this court and has filed a motion in which he seeks access to the record on appeal and an extension of time in which to file his brief.

An appeal of the denial of postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *Bunch v. State*, 370 Ark. 113, 257 S.W.3d 533 (2007) (per curiam). The trial court could not consider the merits of appellant's petition and correctly dismissed

¹ The order appealed indicates that the faxed judgment was filed on this date and the original was filed on August 25, 2008. Only the August 22, 2008, date is reflected in the record before us.

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the petition because it was not timely filed. Where a conviction was obtained on a plea of guilty, Arkansas Rule of Criminal Procedure 37.2(c) provides that the petition for postconviction relief may be filed no later than ninety days after the entry of the judgment.

In this case, the record shows that the petition for postconviction relief was filed 95 days after the judgment was entered. The time limitations imposed in Rule 37.2(c) are jurisdictional in nature, and the circuit court may not grant relief on an untimely petition. *Womack v. State*, 368 Ark. 341, 245 S.W.3d 154 (2006) (per curiam). Because it is clear that appellant cannot prevail on appeal, we dismiss the appeal and the motion is therefore moot.

Appeal dismissed; motion moot.