

SUPREME COURT OF ARKANSAS

No. CR 09-645

MARLON A. PINEDA
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered November 5, 2009

APPELLEE'S MOTION TO DISMISS
APPEAL [CIRCUIT COURT OF
BENTON COUNTY, CR 2005-824,
HON. DAVID S. CLINGER, JUDGE]

MOTION GRANTED.

PER CURIAM

On October 15, 2007, judgment was entered reflecting that appellant Marlon A. Pineda had entered a plea of guilty to attempted capital murder for which a sentence of 180 month's imprisonment was imposed. On March 2, 2009, appellant filed in the trial court a pro se petition for writ of error in which he contended that the judgment did not accurately reflect the number of days to be credited against his sentence for time served in custody awaiting trial. The petition was treated as a petition for postconviction relief pursuant to Criminal Procedure Rule 37.1 and denied on the grounds that it was the fourth such pleading and was in essence a motion for reconsideration of an earlier decision that under Criminal Procedure Rule 37.2(d) was not permitted.

Appellant has lodged an appeal here from the order. Now before us is a motion filed by the appellee State asking that the appeal be dismissed for failure to submit a brief.

Appellant was advised that his brief-in-chief was due here no later than July 27, 2009. He has not filed a brief nor has he sought leave to file a belated brief. The appellee's motion is granted pursuant to Arkansas Supreme Court Rule 4-5.

Cite as 2009 Ark. 554

Motion granted.