

Cite as 2009 Ark. 624

SUPREME COURT OF ARKANSAS

No. CR 09-784

RONNIE LAUDERDALE
Petitioner

v.

STATE OF ARKANSAS
Respondent**Opinion Delivered** December 10, 2009APPELLEE'S MOTION TO DISMISS
APPEAL and APPELLANT'S PRO SE
MOTION TO FILE BELATED BRIEF
[CIRCUIT COURT OF CRITTENDEN
COUNTY, CR 2000-912, HON. RALPH
WILSON, JUDGE]APPELLEE'S MOTION TO DISMISS
APPEAL GRANTED; APPELLANT'S
PRO SE MOTION TO FILE BELATED
BRIEF MOOT.**PER CURIAM**

In 2002, judgment was entered reflecting that petitioner Ronnie Lauderdale had entered a plea of guilty to possession of a controlled substance. Petitioner was sentenced as a habitual offender to 120 months' imprisonment. An amended judgment was entered in 2003. On May 21, 2009, appellant filed in the trial court a pro se petition for postconviction relief pursuant to Criminal Procedure Rule 37.1 that was denied on the ground that it was not a timely petition under the rule.

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. Also before us is a pro se motion filed by appellant seeking leave to file a belated brief.

The appellee's motion is granted, but not because appellant failed to submit a timely

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brief. The appeal is dismissed because the trial court did not err when it concluded that the Rule 37.1 petition filed in the trial court was not timely filed. A postconviction appeal will not be permitted to go forward where it is clear that the appellant could not prevail. See *Johnson v. State*, 362 Ark. 453, 208 S.W.3d 783 (2005) (per curiam); see also *Crosby v. State*, 2009 Ark. 555.

Arkansas Rule of Criminal Procedure 37.2(c) provides that a petition under the rule must be filed within ninety days of the date the judgment was entered if the petitioner pleaded guilty. Here, appellant filed the petition on May 21, 2009, more than five years after the amended judgment of conviction was entered in 2003. Time limitations imposed in Rule 37.2(c) are jurisdictional in nature, and if they are not met, a trial court lacks jurisdiction to consider a Rule 37.1 petition. *Maxwell v. State*, 298 Ark. 329, 767 S.W.2d 303 (1989); see also *Buckhanna v. State*, 2009 Ark. 490.

Appellee's motion to dismiss appeal granted; appellant's motion to file a belated brief moot.