

ARKANSAS SUPREME COURT

No. CR 09-129

Opinion Delivered May 14, 2009

UNDRA WILLIAMS
Appellant

v.

STATE OF ARKANSAS
Appellee

APPELLEE STATE'S MOTIONS TO
DISMISS APPEAL OR FOR EXTENSION
OF BRIEF TIME [CIRCUIT COURT OF
SALINE COUNTY, CR 2002-653, HON.
GARY M. ARNOLD, JUDGE]

MOTION TO DISMISS APPEAL
GRANTED; APPEAL DISMISSED;
MOTION FOR BRIEF TIME MOOT.

PER CURIAM

In 2004, appellant Undra Williams entered a plea of guilty to aggravated robbery. In exchange, the State agreed to a *nolle prosequi* of a second charge, theft of property.¹ The judgment was amended four times and the final amended judgment was entered on December 8, 2005. No appeal was taken.

In 2008, appellant filed in the trial court a pro se petition for postconviction relief under Arkansas Rule of Criminal Procedure 37.2(c), rather than Criminal Procedure Rule 37.1. Therein, appellant sought to withdraw his guilty plea pursuant to Arkansas Rule of Criminal Procedure 26.1. The trial court denied the petition as being untimely filed. Appellant, proceeding pro se, has lodged an appeal here from the order.

Now before us are motions filed by the appellee State asking that the appeal be dismissed or for an extension of brief time, if the motion to dismiss is denied. As appellant could not be

¹In the same criminal case, but in a separate jury trial, appellant was convicted of being a felon in possession of a firearm and sentenced to 96 months' imprisonment. That matter is not at issue here.

successful on appeal, the appellee's motion to dismiss the appeal is granted and the motion for extension of brief time is moot. An appeal from an order that denied a petition for postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *Johnson v. State*, 362 Ark. 453, 208 S.W.3d 783 (2005) (per curiam).

In the petition filed in the trial court, appellant contended that Rule 37.2(c) sets forth a three-year statute of limitations for a petitioner to seek postconviction relief. However, the three-year limitations period was allowed in a superseded version of the rule and was not applicable to appellant's 2005 criminal judgment. Ark. R. Crim. P. 37.2(c) (1990). In its current form, which is applicable to appellant's judgment, Rule 37.2(c) provides that a petition under the rule must be filed within ninety days of the date that the judgment was entered if the petitioner pleaded guilty.

Here, appellant filed the petition nearly three years after entry of the judgment. The time limitations imposed in Rule 37.2(c) are jurisdictional in nature, and a circuit court cannot grant relief on an untimely petition. *Maxwell v. State*, 298 Ark. 329, 767 S.W.2d 303 (1989). All litigants, including those who proceed pro se, must bear responsibility for conforming to the rules of procedure. *Gibson v. State*, 298 Ark. 43, 764 S.W.2d 617 (1989).

Also, appellant's reliance on Rule 26.1 as grounds for withdrawing the guilty plea does not spare appellant from the limitations period that is fatal to his postconviction claim. A motion to withdraw a guilty plea under Rule 26.1 is untimely, if filed after entry of the judgment. *Webb v. State*, 365 Ark. 22, 223 S.W.3d 796 (2006). In that instance, a trial court may consider the motion as one for postconviction relief under Rule 37.1. *Id.* Thus, the ninety-day statute of limitations period under Rule 37.2(c) remains applicable.

Motion to dismiss appeal granted; appeal dismissed; motion for brief time moot.