

Cite as 2010 Ark. 33

SUPREME COURT OF ARKANSAS

No. CR 09-1064

CONRAY CARROLL
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered January 21, 2010

PRO SE MOTIONS FOR BELATED
APPEAL OF ORDER AND FOR
DECLARATORY JUDGMENT
[CIRCUIT COURT OF PULASKI
COUNTY, CR 96-1529, HON.
CHRISTOPHER PIAZZA, JUDGE]MOTION FOR BELATED APPEAL
TREATED AS MOTION FOR RULE
ON CLERK AND DENIED; MOTION
FOR DECLARATORY JUDGMENT
TREATED AS MOTION TO
EXPEDITE AND FOR ORDER
DIRECTING TRIAL COUNSEL TO
REPRESENT PETITIONER, OR IN
THE ALTERNATIVE, FOR
APPOINTMENT OF COUNSEL AND
DECLARED MOOT.**PER CURIAM**

In 1997, judgment was entered reflecting that petitioner Conray Carroll had pleaded guilty to rape for which he was sentenced as a habitual offender to 720 months' imprisonment. In 2009, petitioner filed in the trial court a pro se petition to correct sentence pursuant to Arkansas Code Annotated § 16-90-111 (Repl. 2006). The petition was denied on the ground that it was not timely filed. Petitioner Carroll timely filed a notice of appeal, but he did not tender the record to this court within ninety days of the date of the notice of appeal as required by

Cite as 2010 Ark. 33

Arkansas Rule of Appellate Procedure—Criminal 4(b) (2009).

Petitioner now seeks leave to lodge the record belatedly. As the notice of appeal was timely, we treat the motion as a motion for rule on clerk pursuant to Arkansas Supreme Court Rule 2-2(b) to lodge the record rather than a motion for belated appeal. *Ester v. State*, 2009 Ark. 442 (per curiam) (citing *Mitchem v. State*, 374 Ark. 157, 386 S.W.3d 679 (2008) (per curiam)); *Marshall v. State*, 2009 Ark. 420 (per curiam).

We need not consider petitioner's reasons for the delay in lodging the record because it is apparent that he could not ultimately succeed if we were to permit the appeal to proceed. 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. *Booth v. State*, 353 Ark. 119, 110 S.W.3d 759 (2003) (per curiam); see also *Lukach v. State*, 369 Ark. 475, 255 S.W.3d 832 (2007) (per curiam).

In the petition filed in the trial court, petitioner contended that the sentence imposed on him was illegal. Arkansas Rule of Criminal Procedure 37.2(b) provides that all grounds for postconviction relief from a sentence imposed by a circuit court, including claims that a sentence is illegal or was illegally imposed, must be raised in a petition under Criminal Procedure Rule 37.1. *Womack v. State*, 368 Ark. 341, 245 S.W.3d 154 (2006) (per curiam)

Where a petition includes issues that would be cognizable in a petition under Rule 37.1, section 16-90-111 is superseded to the extent that it conflicts with the time limitations for postconviction relief under Rule 37.2(c). See *Reed v. State*, 317 Ark. 286, 878 S.W.2d 376 (1994) (per curiam). Petitioner entered a plea of guilty. Accordingly, Rule 37.2(c) required that

Cite as 2010 Ark. 33

petitioner's petition for postconviction relief be filed within ninety days of the entry of the judgment. His petition was filed approximately twelve years 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*, 368 Ark. 341, 245 S.W.3d 154; *Maxwell v. State*, 298 Ark. 329, 767 S.W.2d 303 (1989); *see also Young v. State*, 2009 Ark. 556 (per curiam). Petitioner is not entitled to proceed with an appeal of the Rule 37.1 order.

Petitioner also filed in this proceeding a motion for declaratory judgment. The motion urges quick action on the motion for belated appeal and also seeks to have the attorney who represented petitioner at trial declared responsible for representing petitioner on appeal from the Rule 37.1 order. The motion further asks that another attorney be appointed if this court does not find trial counsel to be responsible for representing petitioner on appeal. We treat the motion as a motion to expedite and for an order directing trial counsel to represent petitioner, or in the alternative, for appointment of counsel. In light of the denial of the motion to proceed with an appeal of the order, the motion is moot.

Motion for belated appeal treated as motion for rule on clerk and denied; motion for declaratory judgment treated as motion to expedite and for order directing trial counsel to represent petitioner, or in the alternative, for appointment of counsel and declared moot.