

Cite as 2010 Ark. 60

SUPREME COURT OF ARKANSAS

No. CR 09-1000

RICHARD TOMBOLI
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered February 4, 2010

PRO SE MOTION FOR BELATED
APPEAL OF ORDER [CIRCUIT
COURT OF LONOKE COUNTY, CR
2006-79, HON. PHILLIP WHITEAKER,
JUDGE]

MOTION DENIED.

PER CURIAM

In 2006, petitioner Richard Tomboli was found guilty by a jury of theft by receiving for which a sentence of 360 months' imprisonment was imposed. The Arkansas Court of Appeals affirmed. *Tomboli v. State*, 100 Ark. App. 355, 268 S.W.3d 918 (2007). The court's mandate was issued on December 18, 2007.

On February 25, 2008, sixty-nine days after the mandate was issued, petitioner filed in the trial court a pro se petition for postconviction relief pursuant to Arkansas Criminal Procedure Rule 37.1. (2008). The trial court denied the petition. No appeal was taken and petitioner now seeks leave to proceed with a belated appeal from the order.

We need not consider petitioner's reasons for failing to perfect an appeal because it is clear from the record that the Rule 37.1 petition was not timely filed in the trial court. This court will not permit an appeal from an order that denied a petition for postconviction relief to

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go forward where it is clear that the appellant could not prevail. *Mitchael v. State*, 2009 Ark. 516 (per curiam) (citing *Booth v. State*, 353 Ark. 119, 110 S.W.3d 759 (2003) (per curiam)); *Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (per curiam); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (per curiam).

Pursuant to Arkansas Criminal Procedure Rule 37.2(c), if an appeal was taken, a petition under the rule must be filed in the circuit court within sixty days of the date the mandate was issued by the appellate court. As stated, petitioner filed the petition for Rule 37.1 relief sixty-nine days after the date of the mandate in his case, making the petition untimely. Time limitations imposed in Rule 37.2(c) are jurisdictional in nature, and a circuit court cannot grant relief on an untimely petition. *Lauderdale v. State*, 2009 Ark. 624 (per curiam).

Motion denied.

Brown, J., not participating.