

Cite as 2010 Ark. 314

SUPREME COURT OF ARKANSAS

No. CR 10-301

ANDRE HARRIS, JR.
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered June 24, 2010

PRO SE MOTION TO FILE
BELATED BRIEF [CIRCUIT COURT
OF PULASKI COUNTY, CR 2006-
2398, HON. HERBERT WRIGHT,
JR., JUDGE]

APPEAL DISMISSED; MOTION
MOOT.

PER CURIAM

On February 26, 2009, judgment was entered reflecting that appellant Andre Harris, Jr., had entered a plea of guilty to murder in the second degree. Appellant was sentenced as a habitual offender to 240 months' imprisonment without parole.

On October 8, 2009, appellant filed in the trial court a pro se petition for postconviction relief pursuant to Criminal Procedure Rule 37.1 (2010) 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 appellant for leave to file a belated brief.

As it is clear from the face of the record that the Rule 37.1 petition was not timely filed, we dismiss the appeal. The motion to file a belated brief is moot. This court has consistently held that a postconviction appeal will not be permitted to go forward where it

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is clear that the appellant could not prevail. *Carter v. State*, 2010 Ark. 231, ___ S.W.3d ___ (per curiam); *Gray v. State*, 2010 Ark. 216 (per curiam); see *Tillman v. State*, 2010 Ark. 103 (per curiam); *Pierce v. State*, 2009 Ark. 606 (per curiam); *Grissom v. State*, 2009 Ark. 557 (per curiam); see also *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).

Arkansas Rule of Criminal Procedure 37.2(c) (2010) provides that a petition under the rule must be filed within ninety days of the date the judgment was entered if the petitioner entered a plea of guilty. Here, appellant filed the petition on October 8, 2009, which was 224 days after the judgment of conviction was entered. 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. *Gray*, 2010 Ark. 216; see *Tillman*, 2010 Ark. 103 (citing *Lauderdale v. State*, 2009 Ark. 624 (per curiam)); see also *Maxwell v. State*, 298 Ark. 329, 767 S.W.2d 303 (1989).

Appeal dismissed; motion moot.

CORBIN, J., not participating.