Cite as 2010 Ark. 504

SUPREME COURT OF ARKANSAS

No. CR 10-812

	Opinion Delivered December 16, 2010
JEFF MORGAN Appellant v. STATE OF ARKANSAS Appellee	PRO SE MOTION TO FILE BELATED REPLY BRIEF [MILLER COUNTY CIRCUIT COURT, CR 2002-463, HON. JOE E. GRIFFIN, JUDGE] APPEAL DISMISSED; MOTION MOOT.

PER CURIAM

In 2003, appellant Jeff Morgan was found guilty by a jury of kidnapping and second-degree battery. He was sentenced as a habitual offender to an aggregate term of life imprisonment. We affirmed. *Morgan v. State*, 359 Ark. 168, 195 S.W.3d 889 (2004).

Subsequently, appellant filed in the trial court a petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2010). The petition was denied, and this court affirmed the order. *Morgan v. State*, CR 05-1163 (Ark. Jan. 5, 2006) (unpublished per curiam).

On March 1, 2010, appellant filed in the trial court a pro se petition to vacate or modify the judgment in his case pursuant to "Arkansas Ct Rule 60, (I) & Fed. Rule–60." The motion was centered around the assertion that the evidence at his trial was insufficient to sustain the verdict. He specifically stated that the motion was not intended as a collateral

attack on the judgment but rather was aimed at making the record speak the truth. He argued that, as a direct attack on the judgment, the time limitations for filing a petition for postconviction relief under our postconviction rule, Arkansas Rule of Criminal Procedure 37.1 (2010), did not apply. The trial court denied the motion, and appellant has lodged an appeal here. He now seeks by pro se motion leave to file a belated reply brief.

We need not address the merits of the motion because it is clear from the record that appellant could not prevail on appeal if the appeal were permitted to go forward. Accordingly, the appeal is dismissed, and the motion is moot. *See Goldsmith v. State*, 2010 Ark. 158 (per curiam).

Appellant invoked Arkansas Rule of Civil Procedure 60 and Federal Rule of Civil Procedure 60. He offered, however, nothing to demonstrate that the federal rule applied to his postconviction claims, and this court has consistently held that our Rule 60 does not provide an avenue for postconviction relief. *State v. Rowe*, 374 Ark. 19, 285 S.W.3d 614 (2008); *State v. Wilmoth*, 369 Ark. 346, 255 S.W.3d 419 (2007); *McArty v. State*, 364 Ark. 517, 221 S.W.3d 332 (2006) (per curiam).

We have acknowledged that the theory behind Rule 60 has been applied in those criminal cases where we recognized a court's power to correct a judgment *nunc pro tunc* to make it speak the truth. *Dawson v. State*, 343 Ark. 683, 38 S.W.3d 319 (2001). While Arkansas Rule of Civil Procedure 60(a) allows for a circuit court to modify or vacate a judgment, order, or decree within ninety days of its having been filed with the clerk, we have

emphatically stated that Rule 60(a) does not apply to criminal proceedings. *Burgie v. Norris*, 2010 Ark. 267 (per curiam) (citing *Ibsen v. Plegge*, 341 Ark. 225, 15 S.W.3d 686 (2000)). Nor have we allowed for the application of Arkansas Rule of Civil Procedure 60(c), which allows a court to set aside a judgment more than ninety days after the entry of judgment. *See McArty*, 364 Ark. 517; *Ibsen*, 341 Ark. 225.

Here, appellant's petition did not seek to correct some error in the judgment; it sought to challenge the judgment through a direct attack that is properly made at trial and on the record on appeal. Appellant offered no authority for the proposition that Rule 60 provided a means to launch a direct attack on a judgment of conviction, and we know of none. An argument with no citation to authority or convincing argument in its support that cannot be sustained without further research on the part of the court is not well taken. *See Watkins v. State*, 2010 Ark. 156, ___ S.W.3d ___ (citing *Weatherford v. State*, 352 Ark. 324, 101 S.W.3d 227 (2003)).

Regardless of the label placed on it by the petitioner, a petition is considered an application for relief under Arkansas Rule of Criminal Procedure 37.1 (2010) if the grounds asserted are cognizable under that rule. *Mills v. State*, 2010 Ark. 390 (per curiam). There are certain time limits for proceeding under the rule, and it appears that appellant attempted to circumvent those limits by declaring that he was not seeking postconviction relief, but rather challenging the judgment directly under Rule 60. Inasmuch as appellant failed to raise a claim cognizable by Rule 60, however, there was no ground on which the trial court could have

granted the relief sought. Accordingly, there could be no merit to an appeal from the court's order. An appeal in what is clearly a postconviction matter, even where the appellant argues that his petition is not seeking postconviction relief, will not be permitted to go forward where it is clear from the record that the appellant cannot prevail. *See Frost v. State*, 2010 Ark. 440 (per curiam).

Appeal dismissed; motion moot.