

Cite as 2009 Ark. 125 (unpublished)

ARKANSAS SUPREME COURT

No. CR 09-54

ROBERT MAXWELL
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered March 5, 2009

PRO SE MOTION TO REMAND TO
SETTLE RECORD [CIRCUIT COURT
OF PULASKI COUNTY, CR 2006-2198,
HON. JOHN LANGSTON, JUDGE]

APPEAL DISMISSED; MOTION
MOOT.

PER CURIAM

Appellant Robert Maxwell was found guilty by a jury of first-degree discharge of a firearm from a vehicle and four counts of second-degree discharge of a firearm from a vehicle. He was sentenced as a habitual offender to an aggregate term of life imprisonment plus fifteen years. We affirmed. *Maxwell v. State*, 373 Ark. 553, 285 S.W.3d 195 (2008). The final mandate in the case was issued on June 17, 2008.

On August 25, 2008, appellant filed in the trial court a pro se petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1, seeking to vacate the judgment. The petition was dismissed on the ground that it was not timely filed, and appellant has lodged an appeal from that order in this court. He now seeks to remand the case to the trial court to settle the record.

As we find that appellant could not be successful on appeal, the appeal is dismissed. The motion to remand the matter to the trial court is moot. This court has consistently held that an appeal



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from the denial of postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *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); *Harris v. State*, 318 Ark. 599, 887 S.W.2d 514 (1994) (per curiam); *Reed v. State*, 317 Ark. 286, 878 S.W.2d 376 (1994) (per curiam).

Pursuant to Arkansas Rule of Criminal Procedure 37.2(c), petitions under Rule 37.1 must be filed in the trial court within sixty days of the date the appellate court mandate was issued. The time limits set out in Rule 37.2(c) are jurisdictional in nature, and the circuit court may not grant relief on an untimely petition. *Maxwell v. State*, 298 Ark. 329, 767 S.W.2d 303 (1989). Appellant filed his petition in the trial court sixty-nine days after the mandate in his case was issued. Accordingly, the circuit court lacked jurisdiction to address the allegations contained in the petition, and the court did not err in dismissing the petition on that basis. *Shoemate v. State*, 339 Ark. 403, 5 S.W.3d 446 (1999) (per curiam).

Appellant claims in his motion that he mailed the petition from his place of incarceration in time for it to reach the circuit clerk's office within the sixty-day period. He urges this court to adopt the "prison mail-box rule," whereby a pleading is considered tendered to the court on the date it was placed in the prison mail system. This court, however, has declined to adopt the practice and considers a pleading tendered when it is received by the clerk. *Hamel v. State*, 338 Ark. 769, 1 S.W.3d 434 (1999) (per curiam).

Appeal dismissed; motion moot.