

ARKANSAS SUPREME COURT

No. CR 06-295

NOT DESIGNATED FOR PUBLICATION

TIMOTHY BLACK
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered June 29, 2006

PRO SE MOTION FOR EXTENSION
OF TIME TO FILE REPLY BRIEF
[CIRCUIT COURT OF YELL COUNTY,
NORTHERN DISTRICT, CR 93-79,
HON. PAUL EDWARD DANIELSON,
JUDGE]

APPEAL DISMISSED; MOTION MOOT

PER CURIAM

Appellant Timothy Black was convicted of kidnapping, rape and battery in the second degree and was sentenced to thirty years' imprisonment. The Arkansas Court of Appeals affirmed. *Black v. State*, 50 Ark. App. 42, 901 S.W.2d 849 (1995). Appellant filed in the trial court a *pro se* petition for postconviction relief under Ark. R. Crim. P. 37.1 on February 17, 2005, which was denied. Appellant appealed that order and we dismissed the appeal because the petition was not timely filed. *Black v. State*, CR 05-461 (Ark. June 2, 2005) (*per curiam*).

Appellant then filed in the trial court a motion to correct a clerical mistake in the judgment and commitment order, which was denied. Appellant has lodged an appeal of that order in this court. Appellant filed his brief and a response for the State has also been filed. Appellant, who is in the custody of the Arkansas Department of Correction and proceeding *pro se*, filed the instant motion seeking an extension of fifteen-days' time to file a reply brief.

Because it is clear that appellant cannot prevail, we dismiss the appeal and the motion is

therefore moot. This court has consistently held that 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*); *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*).

Here, appellant filed a pleading that purported to correct clerical error in the judgment. However, appellant did not assert any clerical error, but instead challenged the judgment based upon substantive claims of a failure to comply with Ark. R. Crim. P. 29.1 and what amounted to a claimed violation of the speedy trial requirements. While a court may correct a mere clerical error in a judgment at any time, appellant's motion did not request that relief. Appellant appealed his conviction and his direct appeal was affirmed. Collateral challenges to a judgment fall within the purview of Criminal Procedure Rule 37.1 and are subject to the limitations in Criminal Procedure Rule 37.2 on the timely filing of a petition. Appellant may not now address issues that should have been addressed on direct appeal, or in a timely petition for postconviction relief, through the guise of a motion to correct clerical error.

Appeal dismissed; motion moot.