

ARKANSAS SUPREME COURT

No. CR 07-1221

DUSTIN CHANDLER
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered **April 24, 2008**

APPELLEE'S MOTION TO DISMISS
APPEAL [CIRCUIT COURT OF
BENTON COUNTY, CR 2003-1417,
CR 2004-1121, HON. DAVID S.
CLINGER, JUDGE]

MOTION GRANTED; APPEAL
DISMISSED.

PER CURIAM

A judgment and commitment order entered in Benton County Circuit Court on May 15, 2007, reflects that appellant Dustin Chandler entered negotiated pleas of guilty to charges of manufacturing a controlled substance (methamphetamine), possession of a controlled substance with intent to deliver (methamphetamine), simultaneous possession of drugs and firearms, possession of a controlled substance (psilocybin mushrooms), failure to appear, and use or possession of drug paraphernalia with intent to manufacture (methamphetamine) and that appellant received an aggregate sentence of 288 months' imprisonment in the Arkansas Department of Correction. Appellant, through counsel, filed a petition for postconviction relief under Ark. R. Crim. P. 37.1 on August 15, 2007. The petition was dismissed by the trial court as untimely filed, and appellant has lodged an appeal of that order in this court.

The State has filed a motion to dismiss the appeal on the basis that the Rule 37.1 petition was untimely filed. Where a conviction was not appealed, Ark. R. Crim. P. 37.2(c) requires that the

petition for postconviction relief must be filed within ninety days of the entry of the judgment. Appellant's petition was filed ninety-two days after the date the judgment was entered.

The time limitations imposed in Rule 37.2(c) are jurisdictional in nature, and the circuit court may not grant relief on an untimely petition. *Womack v. State*, 368 Ark. 341, ___ S.W.3d ___ (2006) (per curiam). 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). Because the circuit court could not grant relief on the petition, it is clear that the appellant here cannot prevail. We accordingly grant the State's motion and dismiss the appeal.

Motion granted; appeal dismissed.