

ARKANSAS SUPREME COURT

No. CR 07-784

ABRAHAM GRANT
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered February 7, 2008

PRO SE MOTIONS TO GRANT APPELLANT RELIEF AND FOR DEFAULT JUDGMENT [CIRCUIT COURT OF PHILLIPS COUNTY, CR 2001-272, HON. HARVEY L. YATES, JUDGE]

APPEAL DISMISSED; MOTION FOR RELIEF MOOT; MOTION FOR DEFAULT JUDGMENT DENIED.

PER CURIAM

In 2003, a jury found appellant Abraham Grant guilty of capital murder and first-degree battery and sentenced him to an aggregate term of life imprisonment without parole. This court affirmed the judgment. *Grant v. State*, 357 Ark. 91, 161 S.W.3d 785 (2004). On July 2, 2007, appellant filed a petition to correct an illegal sentence in the trial court. The trial court treated the petition as one under Ark. R. Crim. P. 37.1, and denied and dismissed it. Appellant has lodged an appeal of that decision in this court, and the parties have filed their briefs. Appellant filed the motions now pending before us, in which he complains of the failure by the State to respond.

In both motions, appellant requests some sort of summary judgment, although it is not clear what relief appellant seeks in his motion for relief, and he does not provide authority or any basis for a grant of default judgment by an appellate court in a criminal matter in either motion. This court will not consider an argument that presents no citation to authority or convincing argument. *Kelly v.*

State, 350 Ark. 238, 85 S.W.3d 893 (2002). We therefore deny the motion for default judgment.

As to appellant's motion for relief, even were it clear as to what relief he sought, we need not consider the merits of the motion because it is clear that he cannot prevail on appeal. 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 we dismiss the appeal, appellant's motion for relief is moot.

The petition appellant filed in the trial court sought to have his sentence for capital murder corrected on the basis that he had been charged with first-degree murder. Appellant brought the petition under authority of Ark. Code Ann. § 16-90-111 (Supp. 2003), although the trial court treated the petition as one under Rule 37.1. Where a petitioner's arguments are issues that would be cognizable in a petition under Rule 37.1, section 16-90-111 is superseded to the extent that it conflicts with the time limitations for postconviction relief under Ark. R. Crim. P. 37.2(c). *Womack v. State*, 368 Ark. 341, ___ S.W.3d ___ (2006) (per curiam) (citing *Reeves v. State*, 339 Ark. 304, 5 S.W.3d 41 (1999)). In either case, under the statute or the rule, appellant's claim that the sentences were facially invalid was not supported by the facts and, under the rule, the petition was untimely.

Where the judgment was appealed, Rule 37.2(c) requires that a petition for postconviction relief must be filed within sixty days of the date the mandate issued. Here, the mandate issued on May 18, 2004, and appellant filed his petition in 2007, more than three years later. 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. *Harris v. State*, 318 Ark. 599, 887 S.W.2d 514 (1994).

Furthermore, we note that the facts as stated in appellant's petition do not provide a showing

that appellant was charged with a crime differing from the one listed on the judgment. While the warrant for appellant's arrest does list first-degree murder as appellant contends, the information charging appellant contained in the record on direct appeal clearly states the correct offense of capital murder. Appellant was charged and convicted of the same offense.

The trial court did not have a basis for jurisdiction under the rule. But, under either the rule or the statute, there was no basis for his claim that he was charged with a different offense from the charge listed on his judgment. Because the petition was properly dismissed, appellant cannot prevail on appeal.

Appeal dismissed; motion for relief moot; motion for default judgment denied.