

# ARKANSAS SUPREME COURT

No. CR 08-246

DETRICK D. CROSTON  
Appellant

v.

STATE OF ARKANSAS  
Appellee

**Opinion Delivered**    **May 8, 2008**

PRO SE MOTION FOR EXTENSION  
OF TIME TO FILE APPELLANT'S  
BRIEF [CIRCUIT COURT OF  
FAULKNER COUNTY, CR 2004-  
1061, HON. MICHAEL A. MAGGIO,  
JUDGE]

APPEAL DISMISSED; MOTION  
MOOT.

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## PER CURIAM

A judgment and commitment order entered on October 1, 2004, reflects that a jury found appellant Detrick D. Croston guilty of aggravated robbery and theft of property and sentenced him as a habitual offender to 180 months' imprisonment, a fine of \$1,000, court costs and fees. Appellant did not appeal the judgment, and his pro se motion for belated appeal was dismissed. *Croston v. State*, CR 06-425 (Ark. May 11, 2006) (per curiam).

Appellant previously brought an appeal in this court on the dismissal of a pro se petition for postconviction relief under Ark. R. Crim. P. 37.1, filed on June 8, 2006, that the trial court held to be in excess of the ten-page limit under Rule 37.1(b). That appeal is shown on our docket as dismissed without opinion in response to the State's motion to dismiss on the basis that appellant had failed to timely file his brief. *Croston v. State*, CR 06-1360 (Ark. dismissed Apr. 26, 2007).

On December 27, 2006, and May 31, 2007, appellant filed in the trial court two additional pro se petitions under Rule 37.1. The trial court denied one of those petitions by an order entered

on December 19, 2007. Appellant has lodged an appeal of that December 19, 2007, order in this court, and he now brings this motion requesting an extension of time in which to file his brief. Because appellant cannot prevail, we dismiss the appeal and the motion is moot.

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). In this case, appellant's Rule 37.1 petition was not timely filed and it is clear that he cannot prevail.

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. In this case, where the judgment was entered on October 1, 2004, the ninetieth day was December 30, 2004. 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, 245 S.W.3d 154 (2006) (per curiam). Because the circuit court could not grant relief on either of the petitions contained in the record, it is clear that the appellant here cannot prevail. Accordingly, we dismiss the appeal and the motion is moot.

Appeal dismissed; motion moot.