

ARKANSAS SUPREME COURT

No. CR 08-329

ROBERT SINGLETON JOHNSON, JR.
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered May 15, 2008

PRO SE MOTION TO SUPPLEMENT
THE RECORD [CIRCUIT COURT
OF GARLAND COUNTY, CR 2006-
23 I, HON. JOHN H. WRIGHT,
JUDGE]

APPEAL DISMISSED; MOTION
MOOT.

PER CURIAM

In 2006, a jury found appellant Robert Singleton Johnson, Jr., guilty of second-degree murder and sentenced him to 240 months' imprisonment. The Arkansas Court of Appeals affirmed the judgment. *Johnson v. State*, CACR 06-1200 (Ark. App. Oct. 24, 2007). Appellant timely filed a pro se petition for postconviction relief under Ark. R. Crim. P. 37.1, which the trial court dismissed by order entered January 17, 2008. Appellant has lodged an appeal of that order in this court and now brings this motion to supplement the record.

Appellant seeks to add to the record so as to raise claims concerning a later order that appellant indicates denied a petition appellant filed after the order was entered dismissing his original Rule 37.1 petition. We do not consider the motion to supplement, as it is clear that appellant cannot prevail in his appeal. Because we dismiss the appeal, 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). The trial court dismissed appellant's petition for failure to comply with the requirements listed in Rule 37.1(b) concerning the margins of the petition. The petition contained in the record clearly does not conform to those requirements; some portions of the text are not fully legible and others butt against the very edge of the page.

This court does not reverse a denial of postconviction relief unless the trial court's findings are clearly erroneous. *Davis v. State*, 366 Ark. 401, 235 S.W.3d 902 (2006). Rule 37.1(b) permits either the circuit court or the appellate court to dismiss any petition that fails to comply with its requirements. The trial court's findings on this point were not clearly erroneous and it is clear that appellant cannot prevail on appeal.

We need not address the issues in appellant's motion because the appeal is dismissed and his motion is therefore moot. We do note, however, that petitioner's original petition under Rule 37.1 was filed on the last day of the sixty-day period for filing under Ark. R. Crim. P. 37.2(c). 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). Any conforming petition filed at a later date would not have been timely and the trial court would not have had jurisdiction to consider such a petition. *See Shaw v. State*, 363 Ark. 156, 211 S.W.3d 506 (2005) (per curiam).

Appeal dismissed; motion moot.