

ARKANSAS SUPREME COURT

No. CR 08-355

ANDREW TREMAINE BREWER
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered April 24, 2008

PRO SE MOTION FOR BELATED
APPEAL [CIRCUIT COURT OF
COLUMBIA COUNTY, CR 2005-206,
CR 2006-16, HON. LARRY W.
CHANDLER, JUDGE]

MOTION DISMISSED.

PER CURIAM

A jury found petitioner Andrew Tremaine Brewer guilty of possession of a controlled substance (Darvocet) and residential burglary and sentenced him as a habitual offender to an aggregate term of 840 months' imprisonment. The Arkansas Court of Appeals affirmed the judgment. *Brewer v. State*, CACR 06-1403 (Ark. App. Sept. 19, 2007). Petitioner filed in this court a motion to proceed pro se and a pro se petition for review under Ark. Sup. Ct. R. 1-2(b) that was denied. *Brewer v. State*, 371 Ark. 532, ___ S.W.3d ___ (Nov. 15, 2007). On December 6, 2007, petitioner filed in the trial court a pro se petition for postconviction relief under Ark. R. Crim. P. 37.1. The trial court denied the petition in an order entered on December 17, 2007. Petitioner filed a notice of appeal in the trial court on January 24, 2008.

Petitioner has filed in this court a pro se motion for belated appeal, acknowledging that the notice of appeal was not filed within the time required under Ark. R. App. P.–Civ. 4(a) and requesting permission to proceed with an appeal of the denial of his Rule 37.1 petition. We need

not consider the merits of petitioner's motion, however, because his Rule 37.1 petition was not timely filed.

A petition under Rule 37.1 must be filed after the mandate is issued because, once a judgment has been appealed, the trial court does not regain jurisdiction over the case until the mandate is issued. *Butler v. State*, 367 Ark. 318, 239 S.W.3d 514 (2006) (per curiam). In this case, due to a clerical error, the mandate did not issue until March 19, 2008. The trial court did not have jurisdiction to consider the Rule 37.1 petition, and relief was properly denied on that basis.

Motion dismissed.