

ARKANSAS SUPREME COURT

No. CR 08-432

CARLTON KING

Appellant

v.

STATE OF ARKANSAS

Appellee

Opinion Delivered June 19, 2008

PRO SE MOTION FOR EXTENSION
OF TIME TO FILE APPELLANT'S
BRIEF [CIRCUIT COURT OF
UNION COUNTY, CR 2005-274,
HON. CAROL C. ANTHONY,
JUDGE]

APPEAL DISMISSED; MOTION
MOOT.

PER CURIAM

A judgment and commitment order entered on December 4, 2006, reflects that appellant Carlton King entered a negotiated plea of guilty or nolo contendere to delivery of a controlled substance (cocaine) and that, as a habitual offender, he was sentenced to 720 months' imprisonment in the Arkansas Department of Correction. On January 15, 2008, appellant filed, under the same criminal case number, a pro se petition challenging the constitutionality of the statute under which he was charged with delivery of cocaine, Ark. Code Ann. § 5-64-401 (Supp. 2003). The trial court denied and dismissed the petition, and appellant has lodged an appeal of that order in this court.¹ Now before us is appellant's pro se motion for an extension of time in which to file his brief. Because we determine that appellant cannot prevail on this appeal, we dismiss the appeal and the

¹ We note that the petition was filed listing Robin Carroll and Jamie Pratt as "respondents." The order appealed, however, lists the opposing party as the "State of Arkansas."

motion is therefore 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). Here, appellant's petition was filed in his criminal case and must be treated as an untimely petition for postconviction relief under Ark. R. Crim. P. 37.1.

Although appellant labeled the petition as one for declaratory judgment, he sought to attack his judgment through the petition, and the petition must therefore be considered pursuant to Rule 37.1. *State v. Wilmoth*, 369 Ark. 346, 350-351, ___ S.W.3d ___, ___ (2007) (citing *Bailey v. State*, 312 Ark. 180, 182, 848 S.W.2d 391, 392 (1993) (per curiam)). Where a conviction was not appealed, Ark. R. Crim. P. 37.2(c) requires that a Rule 37.1 petition must be filed within ninety days of the entry of the judgment. In this case, that period expired on Sunday, March 4, 2007, and any petition for postconviction relief was required to be filed by the following Monday, March 5, 2007. Appellant did not file his petition until more than ten months after that date.

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 the petition, it is clear that appellant cannot prevail on appeal.

Appeal dismissed; motion moot.