

ARKANSAS SUPREME COURT

No. CR 08-450

TIMOTHY DON BATES
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered June 19, 2008

PRO SE MOTION FOR EXTENSION
OF BRIEF TIME AND MOTION FOR
DUPLICATION AT PUBLIC EXPENSE
[CIRCUIT COURT OF WASHINGTON
COUNTY, CR 2005-625, CR 2005-2597,
HON. WILLIAM A. STOREY, JUDGE]

APPEAL DISMISSED; MOTIONS
MOOT.

PER CURIAM

In 2006, appellant Timothy Don Bates entered a plea of guilty in two cases to the charges of conspiracy and manufacturing methamphetamine and a subsequent offense of possession of marijuana. He was sentenced to an aggregate term of 180 months' imprisonment. In 2007, Bates filed a pro se motion to correct the judgment "to reflect Act 1034 of 2005," which the trial court treated as a Rule 37.1 postconviction petition; the court denied it without a hearing. Bates appealed the trial court's order denying his petition and then moved this court for an extension to file a brief and for duplication of the brief at public expense.

The rule is well established that a petition for postconviction relief attacking a judgment is considered under Rule 37.1, regardless of the label given it by the petitioner. *See State v. Wilmoth*, 369 Ark. 346, ___ S.W.3d ___ (2007). Here, Bates used the word "motion" instead of petition when describing the postconviction relief he sought. Nonetheless, Bates seeks to correct the trial court's judgment and commitment order, but he is not permitted to go forward where it is clear that he

cannot prevail. *See Johnson v. State*, 362 Ark. 453, 208 S.W.3d 783 (2005) (per curiam). Here, Bates can not prevail because he was late in filing his petition for postconviction relief within ninety days from the date the judgment was entered as required under Ark. R. Crim. P. 37.2(c). Bates's judgment was entered on March 2, 2006, and his petition was not filed until November 1, 2007 – more than one-and-one-half years after the judgment was entered. Time limitations imposed in Rule 37.2(c) are jurisdictional in nature, and if they are not met, a trial court lacks jurisdiction to grant relief. *Maxwell v. State*, 298 Ark. 329, 767 S.W.2d 303 (1989).

Appeal dismissed; motions moot.