

ARKANSAS SUPREME COURT

No. CR 08-76

Opinion Delivered March 6, 2008

ROBERT WAYNE GRADY
Appellant

v.

STATE OF ARKANSAS
Appellee

PRO SE MOTIONS FOR
CLARIFICATION AND FOR COPY OF
TRANSCRIPT [CIRCUIT COURT OF
PERRY COUNTY, CR 99-12, HON.
TIMOTHY D. FOX, JUDGE]

APPEAL DISMISSED; MOTIONS
MOOT.

PER CURIAM

In 2001, appellant Robert Wayne Grady was found guilty by a jury of capital murder and sentenced to life imprisonment without parole. We affirmed. *Grady v. State*, 350 Ark. 160, 85 S.W.3d 531 (2002). In 2007, appellant filed in the trial court a petition for writ of habeas corpus pursuant to Act 1780 of 2001.¹ The trial court treated the petition as one under Ark. R. Crim. P. 37.1 and denied it without a hearing. Appellant lodged an appeal here from the order.

Now before us are appellant's pro se motions for clarification of our court's rules in appeals and for a copy of the transcript, although it is not clear whether he seeks the transcript from his direct appeal or the record in this appeal. As appellant could not be successful on appeal, the appeal is dismissed and the motions are moot. An appeal from an order that denied a petition for postconviction relief will not be permitted to go forward where it is clear that the appellant could not

¹Act 1780 of 2001, as amended by Act 2250 of 2005 and codified as Ark. Code Ann. §§ 16-112-201–16-112-208 (Repl. 2006), provides that a writ of habeas corpus can issue based upon new scientific evidence proving a person actually innocent of the offense or offenses for which he or she was convicted.

prevail. *Johnson v. State*, 362 Ark. 453, 208 S.W.3d 783 (2005) (per curiam).

In his petition, appellant argued the following bases for dismissal of his conviction: (1) civil rights violation based on prosecutorial conflict of interest and bias; (2) temporary insanity as an affirmative defense; (3) ineffective assistance of counsel; (4) incorrect criminal charge and time limitations placed on the trial by the trial court. None of these arguments concerned scientific testing of physical evidence introduced at trial that would prove appellant's actual innocence. Therefore, the petition was not one predicated upon Act 1780.

The trial court considered the petition to be seeking postconviction relief under Rule 37.1, which provides a means to collaterally attack a conviction, and is not a means for direct attack on the judgment or a substitute for an appeal. *Wainwright v. State*, 307 Ark. 569, 823 S.W.2d 449 (1992) (per curiam). To the extent that any of these allegations presented valid claims for a collateral attack on the judgment, the petition was untimely filed.

Pursuant to Ark. R. Crim. P. 37.2(c), if an appeal was taken, a petition under Rule 37.1 must be filed in the trial court within sixty days of the date the mandate was issued by the appellate court. Here, the mandate was issued by our court on October 16, 2002, and appellant's petition was filed on August 21, 2007, almost five years after the mandate was issued. Time limitations imposed in Rule 37.2(c) are jurisdictional in nature, and if they are not met, a trial court lacks jurisdiction to consider a Rule 37.1 petition. *Maxwell v. State*, 298 Ark. 329, 767 S.W.2d 303 (1989).

Appeal dismissed; motions moot.