

## SUPREME COURT OF ARKANSAS

No. CR 10-638

STATE OF ARKANSAS

APPELLANT

V.

KENNETH HARRISON

APPELLEE

Opinion Delivered November 3, 2011

MOTION FOR RECONSIDERATION  
[PULASKI COUNTY CIRCUIT COURT,  
CR 2006-149, HON. MARION A.  
HUMPHREY, JUDGE]REMANDED FOR FINDINGS OF  
FACT AND CONCLUSIONS OF LAW.

## PER CURIAM

The State brought an appeal of an order entered in the Pulaski County Circuit Court that granted appellee Kenneth Harrison a new trial on appellee's petition under Arkansas Rule of Criminal Procedure 37.1 (2011). We did not reach the merits of the State's appeal, and, instead, we reversed and vacated the order granting postconviction relief because the record did not demonstrate jurisdiction by the trial court in the matter in that the record did not contain a timely filed Rule 37.1 petition. *Harrison v. State*, 2011 Ark. 297 (per curiam). Appellee has now filed a motion for reconsideration of that decision

We noted in our previous opinion that, in order to establish jurisdiction in the trial court, Arkansas Rule of Criminal Procedure 37.2(c) (2010) required appellee to file his petition for relief under Rule 37.1 no later than February 25, 2008. The trial court clearly treated a later petition as timely filed, because it held a hearing and addressed the merits before granting relief. There was, however, no timely verified petition in the record before this court to support jurisdiction. In his motion for reconsideration, appellee avers that he never received file-marked

copies of any paperwork sent in before the relevant date “due to problems with the circuit court clerk.”

As the State indicates in its response to the motion,<sup>1</sup> appellee did not provide cause in the motion on which to base reconsideration of our previous decision. Appellee’s allegation that he does not have all of the necessary documents simply does not serve to provide this court with evidence that there was a timely-filed petition. Without establishing that the State could supplement its record on appeal to include a basis for the trial court’s jurisdiction over the petition, this court cannot assume jurisdiction over the matter. *See Grant v. State*, 2011 Ark. 309 (per curiam) (where the circuit court lacks jurisdiction, the appellate court also lacks jurisdiction).

We note, however, that appellee tendered a reply to the State’s response that attaches what appears to be a copy of the docket sheet for the trial court in this case. That document indicates that a Rule 37.1 petition, an amended Rule 37.1 petition, and a motion for permission to amend the Rule 37.1 petition were filed on February 25, 2008. The State did not indicate in its response that the trial court had a basis for jurisdiction over the later petition, nor did it choose to address the pleadings filed on February 25, 2008. Counsel representing the State has an obligation of candor towards the tribunal. Ark. R. Prof’l Conduct 3.3 (2011). In criminal proceedings, an attorney who represents the State serves his client’s interest through the establishment of justice rather than the pursuit of victory. *See Brady v. Maryland*, 373 U.S. 83 (1963). Our expectation is that the State would actively seek to correct any mistake by which

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<sup>1</sup>Although the State treats the motion as a petition for rehearing under Arkansas Supreme Court Rule 2-3 (2011), our decision dismissed on the procedural basis and did not reach the merits of the appeal; the motion is therefore appropriately labeled as one for reconsideration.

it provided a record to this court, in an appeal that it lodged, that was deceptively incomplete on the issue of jurisdiction of the trial court in a matter such as this.

The trial court's docket entries raise some question as to whether the record provided to this court was deficient. As previously noted, the trial court held a hearing on the later-filed petition. It may have been that, although appellee filed a timely petition that did confer jurisdiction, the trial court only considered the later-filed amended petition that appears in the record without referencing the earlier timely-filed petition that established its jurisdiction. In short, without a complete record containing all the pertinent documents, we cannot ascertain whether a timely petition was indeed filed.

Accordingly, we remand to the trial court for findings of fact and conclusions of law on the issue of whether there was a timely Rule 37.1 petition filed in this case. Those findings, along with the transcript of any proceedings on the matter, are to be provided to this court within sixty days of the date of this order. Once the findings are returned, we will consider appellee's motion for reconsideration.

Remanded for findings of fact and conclusions of law.