

SUPREME COURT OF ARKANSAS

No. CR 10-809

DAVID JEFFERSON MORGAN
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE**Opinion Delivered** September 22, 2011PRO SE APPEAL FROM THE
SEBASTIAN COUNTY CIRCUIT
COURT, FORTSMITH DISTRICT, CR 88-
278B, HON. J. MICHAEL FITZHUGH,
JUDGEAFFIRMED.**PER CURIAM**

Appellant David Jefferson Morgan appeals from the denial of his petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (1988). For reversal, appellant argues that the circuit court erred in denying appellant's claim that his conviction was void due to lack of the circuit court's jurisdiction. We affirm.

In 1988, appellant entered a plea of guilty to first-degree murder and received a life sentence. On March 23, 2010, appellant filed a petition for postconviction relief, alleging that he was entitled to relief on the following five grounds: (1) the conviction was void on the basis that the circuit court lacked jurisdiction; (2) the circuit court erred in failing to conduct a juvenile-transfer hearing; (3) the circuit court erred by denying appellant's request for a psychiatric examination; (4) trial counsel was ineffective for failing to make a preliminary showing of a need for a psychiatric examination; (5) trial counsel gave poor advice concerning the admissibility of appellant's statement.

At the time of appellant's conviction, Rule 37.2(c) required that "[a] petition claiming

relief must be filed in circuit court, or, if prior permission to proceed is necessary as indicated in paragraph (a) [a case originally appealed to this court], in the Supreme Court, within three (3) years of the date of commitment, unless the ground for relief would render the judgment absolutely void.” *Maxwell v. State*, 298 Ark. 329, 331, 767 S.W.2d 303, 304 (1989). The State responded that appellant’s petition was untimely. On April 27, 2010, the circuit court entered an order denying appellant’s petition both on procedural grounds, as the petition was not filed within the requisite three years, and on substantive grounds, as the allegations were insufficient to void the conviction. From the order, appellant brings this appeal.

On appeal, appellant raises the same challenges presented in his Rule 37.1 petition. Appellant asserts that the applicable three-year statute of limitations is not controlling because his conviction was void as a matter of law. In *Maxwell*, 298 Ark. 329, 331, 767 S.W.2d 303, we said:

Jurisdiction is the power and authority of the court to act and to hear a case on its merits. Here, Rule 37.2(c) clearly limits the court’s power when cases are filed after three years to act on and hear the merits of only those cases where the conviction would be rendered absolutely void, and we have consistently so held. . . .The need for stability of judgments in criminal cases requires that the petitioner raise whatever issues he may desire to raise within the reasonable time set by our procedural rules.

Maxwell, 298 Ark. at 331–32, 767 S.W.2d at 304–05. In *Maxwell*, the circuit court determined that Maxwell’s claims were insufficient to render his felony-murder conviction absolutely void. *Id.* at 332, 767 S.W.2d at 305. Noting Maxwell’s insufficient claims, we held that the circuit court properly denied his petition but affirmed on different grounds. We concluded that, because of Maxwell’s “inordinate delay” in filing his petition seven years after his guilty plea, he filed his petition well beyond the requisite three-year period. *Id.* at 333, 767 S.W.2d at 306.

Similarly, in the present case, appellant waited approximately twenty-two years to file for Rule 37.1 relief. Clearly, appellant's petition was filed outside the three-year period required by Rule 37.2(c). We have stated that the timeliness of a postconviction petition is jurisdictional and the trial court cannot grant postconviction relief on an untimely petition. *See Bailey v. State*, 312 Ark. 180, 848 S.W.2d 391 (1993) (citing *Maxwell*, 298 Ark. 329, 767 S.W.2d 303). Thus, we conclude that appellant's petition was untimely, and the circuit court, after having heard the evidence, should have determined that none of the contentions rendered appellant's conviction absolutely void and should have dismissed the petition accordingly. *See Maxwell*, 298 Ark. 329, 767 S.W.2d 303.

However, appellant maintains that the three-year period does not control because his conviction was void as a matter of law. Notwithstanding the untimeliness of appellant's petition, appellant's specific arguments fail. *See id.*, 298 Ark. 329, 767 S.W.2d 303. First, appellant's assertion that the circuit court lacked jurisdiction was not factually developed and does not present convincing argument, and, therefore, we will not consider it. *Weatherford v. State*, 352 Ark. 324, 101 S.W.3d 227 (2003). With regard to appellant's allegation regarding the failure of the circuit court to hold a juvenile-transfer hearing, he failed to establish that the judgment entered was void. Moreover, he failed to show prejudice, particularly when he was charged with first-degree murder, and the serious and violent nature of the offense was sufficient for trying him as an adult. *See Carroll v. State*, 326 Ark. 882, 934 S.W.2d 523 (1996); *Brooks v. State*, 326 Ark. 201, 929 S.W.2d 160 (1996); *Holland v. State*, 311 Ark. 494, 844 S.W.2d 943 (1993).

With regard to appellant's claim that he was denied a request for a psychiatric

examination and that defense counsel was ineffective for failing to establish that such an examination was needed, the allegation was insufficient, as asserted by appellant, to demonstrate that the judgment was rendered a nullity. As to appellant's argument that his conviction was void due to counsel's advice regarding appellant's statement, the claim was also insufficient to establish that the judgment was rendered void by virtue of counsel's advice.

In short, appellant's claims were not sufficient to render his conviction absolutely void, and, thus, his petition, which he filed well beyond the three-year limit of Rule 37.2(c), was untimely filed. While the circuit court based its denial on the merits of appellant's petition for postconviction relief, we affirm the decision on the basis of the untimeliness of the petition. *See Maxwell*, 298 Ark. 329, 767 S.W.2d 303 (citing *Edgemon v. State*, 292 Ark. 465, 730 S.W.2d 898 (1987)).

Affirmed.