

## SUPREME COURT OF ARKANSAS

No. CR 10-877

JAMES BRIAN WRIGHT  
APPELLANT

V.

STATE OF ARKANSAS  
APPELLEE

Opinion Delivered September 15, 2011

PRO SE APPEAL FROM THE  
SEBASTIAN COUNTY CIRCUIT  
COURT, FORT SMITH DISTRICT [CR  
06-1258, CR 05-744], HON. J. MICHAEL  
FITZHUGH, JUDGEAFFIRMED.**PER CURIAM**

On June 28, 2005, appellant James Brian Wright entered a plea of guilty in the Sebastian County Circuit Court, Fort Smith District, to the offenses of overdraft and failure to comply with the reporting requirements of the Sex and Child Offender Registration Act. As a result, the circuit court suspended imposition of sentence for a period of five years on both convictions. For each offense, appellant was sentenced to two years in prison followed by a four-year suspended imposition of sentence. Appellant brings this appeal from the circuit court's order denying the latest in a series of motions that he filed seeking to set aside his convictions for failure to register as a sex offender. For reversal, he contends that his failure-to-register convictions should be overturned because an Oklahoma court vacated the rape conviction on which the registration requirement was based, that the circuit court's refusal to set aside the convictions violated the Full Faith and Credit Clause of the United States Constitution; and that under federal law it was the responsibility of the releasing institution to inform the local

government of the requirement to register. We affirm the circuit court's decision that appellant was not entitled to postconviction relief.

At issue in this case are appellant's 2005 and 2006 convictions for failing to register as a sex offender. In May 2008, an Oklahoma District Court granted appellant's application for postconviction relief and vacated appellant's 1994 conviction for rape. On June 16, 2008, appellant filed a petition in circuit court pursuant to Arkansas Rule of Criminal Procedure 37.1 (2011), arguing that his failure-to-register convictions should be set aside because the rape conviction, which led to the requirement for him to register as a sex offender, had been vacated. In July 2008, the circuit court denied appellant's petition as untimely. The court also noted that appellant was under an obligation to register when he pled guilty to the then valid charges of failing to register as a sex offender.<sup>1</sup>

On November 26, 2008, appellant filed a petition for writ of error coram nobis in circuit court. In this petition, appellant also argued that his convictions for failing to register should be vacated due to the setting aside of his Oklahoma rape conviction. By an order dated December 5, 2008, the circuit court denied the petition for writ of error coram nobis, finding that the setting aside of the rape conviction had no effect on his convictions for failing to register because, at the time appellant pled guilty to those offenses, he was required by law to register as a sex offender.

In October 2009, appellant filed a "Motion to Expunge or Seal." The circuit court

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<sup>1</sup>The circuit court subsequently granted appellant's petition that he no longer be required to register as a sex offender in the State of Arkansas.

denied this motion as well. Then, on May 10, 2010, appellant filed a motion to vacate his failure-to-register convictions, again asserting that his convictions could not stand once the rape conviction has been set aside. On May 11, 2010, the circuit court denied the motion because the “matter has been ruled upon several times by this Court.”

In July 2010, appellant filed an “Amendment to Post Conviction Motion Under Miscarriage of Justice.” In this petition, appellant continued to argue that he should be relieved of his convictions for failure to register because he no longer stood convicted of a sex-based offense. On July 21, 2010, the circuit court entered an order denying the motion on the ground that the same issue had been previously decided by the court. Although appellant had not appealed any of the previous orders denying his various postconviction requests for relief, he perfected the instant appeal from the order.

In this appeal, appellant first argues that his convictions for failing to register as a sex offender should be set aside because the underlying rape conviction has been vacated. He also asserts that the Oklahoma district court’s order setting aside the rape conviction has not been given full faith and credit and that the proper authorities did not give notice of the requirement for him to register as a sex offender. In response, the State contends that the circuit court lacked jurisdiction to entertain appellant’s motion. The State’s argument has merit.

Although appellant did not specify on what basis he was seeking relief in the “Amendment to Post Conviction Motion Under Miscarriage of Justice,” this court has held that a petition for postconviction relief attacking a judgment, regardless of the label placed on it by petitioner, is considered pursuant to our postconviction rule, Criminal Procedure Rule 37.1

(2011). *State v. Wilmoth*, 369 Ark. 346, 255 S.W.3d 419 (2007). Because appellant's convictions stem from guilty pleas, he was required to file a Rule 37.1 petition within ninety days from the entry of judgment. Ark. R. Crim. P. 37.2(c)(i). The 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 postconviction relief. *Velcoff v. State*, 2011 Ark. 257 (per curiam); *Holloway v. State*, 2010 Ark. 42 (per curiam) (citing *Maxwell v. State*, 298 Ark. 329, 767 S.W.2d 303 (1989)). Clearly, the instant motion was not filed within ninety days of the judgments, and, thus, the circuit court did not have jurisdiction to consider it. Moreover, appellant had unsuccessfully sought relief pursuant to Rule 37.1, and he was not entitled to seek such relief again. This court has consistently upheld the rule that a petitioner is limited to one petition for postconviction relief unless the first petition was specifically denied without prejudice to allow the filing of a second petition. *Kemp v. State*, 2009 Ark. 631; *McCuen v. State*, 328 Ark. 46, 941 S.W.2d 397 (1997).

We also agree with the State that the circuit court could not treat the motion as one brought pursuant to Arkansas Rule Civil Procedure 60 (2011). This court has consistently held that Rule 60 does not provide an avenue for postconviction relief. *Green v. State*, 2009 Ark. 190 (per curiam); *State v. Rowe*, 374 Ark. 19, 285 S.W.3d 614 (2008); *State v. Wilmoth*, 369 Ark. 346, 255 S.W.3d 419 (2007); *McArty v. State*, 364 Ark. 517, 221 S.W.3d 332 (2006) (per curiam).

Accordingly, we affirm the circuit court's decision denying postconviction relief.

Affirmed.