

SUPREME COURT OF ARKANSAS

No. CR 11-1217

CONRAY CARROLL

APPELLANT

v.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered March 1, 2012

PRO SE PETITION FOR WRIT OF CERTIORARI AND MOTION TO AMEND APPEAL [PULASKI COUNTY CIRCUIT COURT, 60CR 96-1529, HON. CHRISTOPHER CHARLES PIAZZA, JUDGE]

APPEAL DISMISSED; PETITION AND MOTION MOOT.

PER CURIAM

In 1997, judgment was entered reflecting that appellant Conray Carroll had pled guilty to rape, for which he was sentenced as a habitual offender to 720 months' imprisonment. In 2011, approximately fourteen years after the plea was entered, appellant filed in the trial court a pro se motion for depositions and discovery pursuant to Arkansas Rule of Civil Procedure 26 (2011). In the motion, appellant sought a copy of medical reports pertaining to his criminal case and an evidentiary hearing so that he might challenge his conviction. The motion was denied on the ground that it amounted to an untimely petition for postconviction relief under Arkansas Rule of Criminal Procedure 37.1 (2011). Now before us are a petition for writ of certiorari filed by appellant, seeking to add certain documents to the record lodged on appeal, and a motion to "amend appeal," the purpose of which is unclear.

As it is clear from the face of the record that the motion filed in the trial court was indeed an untimely petition for postconviction relief, we dismiss the appeal. *See Coleman v. State*, 2010

Ark. 490 (per curiam). The petition for writ of certiorari and motion to amend the appeal are moot. This court has consistently held that a postconviction appeal will not be permitted to go forward where it is clear that the appellant could not prevail. *Velcoff v. State*, 2011 Ark. 267 (per curiam); *Kelley v. State*, 2011 Ark. 175 (per curiam); *Delamar v. State*, 2011 Ark. 87 (per curiam); *Morgan v. State*, 2010 Ark. 504 (per curiam); *Sparacio v. State*, 2010 Ark. 335 (per curiam); *Watkins v. State*, 2010 Ark. 156, ___ S.W.3d ___ (per curiam) (citing *Pierce v. State*, 2009 Ark. 606 (per curiam)).

Petitioner's petition was correctly treated as one for postconviction relief under Rule 37.1, inasmuch as it was a challenge to the judgment of conviction entered in his case. Regardless of the label placed on a pleading, a pleading that seeks postconviction relief is governed by the provisions of our postconviction rule. *Bell v. State*, 2011 Ark. 379 (per curiam) (citing *Lewis v. State*, 2011 Ark. 176 (per curiam)); *Wright v. State*, 2011 Ark. 356 (per curiam).

Because appellant's convictions stemmed 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. *Wright*, 2011 Ark. 356; *Velcoff*, 2011 Ark. 257; *Holloway v. State*, 2010 Ark. 42 (per curiam) (citing *Maxwell v. State*, 298 Ark. 329, 767 S.W.2d 303 (1989)). Petitioner did not proceed with a timely petition, and, thus, the circuit court did not have jurisdiction to consider it. *Wright*, 2011 Ark. 356.

Appeal dismissed; petition moot.