

SUPREME COURT OF ARKANSAS

No. CR 11-1221

PHILLIP HARRISON
APPELLANT

v.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered April 5, 2012

PRO SE MOTIONS FOR EXTENSION OF TIME TO FILE BRIEF, FOR APPOINTMENT OF COUNSEL, TO WAIVE COURT COSTS AND FEES, AND FOR “SUBPOENA DEUCES TECUM” [MILLER COUNTY CIRCUIT COURT, CR 2007-470, HON. KIRK JOHNSON, JUDGE]

APPEAL DISMISSED; MOTIONS MOOT.

PER CURIAM

Appellant Phillip Harrison lodged an appeal in this court following the trial court’s denial of his pro se petition under Arkansas Rule of Criminal Procedure 37.1 (2011). Appellant sought relief from a judgment reflecting appellant’s 2011 conviction on two counts of theft of property. He has filed two motions for extension of time to file the appellant’s brief, a motion for appointment of counsel, a motion to waive court costs and fees, and a motion “subpoena deuces tecum.” We dismiss the appeal, and, as a result, the motions are moot.

An appeal from an order that denied a petition for a postconviction remedy will not be permitted to go forward where it is clear that the appellant could not prevail. *Watson v. State*, 2012 Ark. 27 (per curiam); *Riddell v. State*, 2012 Ark. 11 (per curiam); *Hendrix v. State*, 2012 Ark. 10 (per curiam); *Croft v. State*, 2010 Ark. 83 (per curiam); *Crain v. State*, 2009 Ark. 512 (per curiam). In this case, appellant’s petition was filed outside of the time limitations imposed by

Arkansas Rule of Criminal Procedure 37.2(c), and the trial court was without jurisdiction to grant relief. The time limitations imposed in Rule 37.2 are jurisdictional in nature, and, if those requirements are not met, a trial court lacks jurisdiction to grant postconviction relief. *Tolliver v. State*, 2012 Ark. 46 (per curiam); *Hendrix*, 2012 Ark. 10; *Talley v. State*, 2011 Ark. 497 (per curiam); *Eaton v. State*, 2011 Ark. 436 (per curiam). Where the circuit court lacks jurisdiction, the appellate court also lacks jurisdiction. *Talley*, 2011 Ark. 497, *Gilliland v. State*, 2011 Ark. 480 (per curiam). It is clear that an appellant cannot prevail where this court does not have jurisdiction for the appeal.

Rule 37.2 provides that, where a conviction was obtained on a plea of guilty, a petition under Rule 37.1 must be filed within ninety days of the date of entry of judgment. Ark. R. Crim. P. 37.2(c)(i). The judgment in the record reflects that appellant entered a negotiated plea of guilty on each of the two counts of theft of property and that he received an aggregate sentence of seventy-two months' imprisonment for the charges. The judgment bears two file marks, one indicating that the date was April 28, 2011, and the other indicating that the judgment was recorded on May 4, 2011. The docket entry in the record also indicates April 28, 2011, as the date that the judgment was entered. Appellant's petition was filed on September 9, 2011. Even using the later possible date for entry of the judgment, appellant's petition was filed thirty-eight days after the last date for timely filing.

The trial court found that the petition was not timely filed, but it provided a ruling on two issues raised in the petition, despite that finding. The court considered the claims because it determined that the issues challenged the judgment on a jurisdictional basis. The trial court,

however, could not reach those issues where the petition was not timely filed. *See Stephenson v. State*, 2011 Ark. 506 (per curiam). While a petitioner may have other remedies for relief available on certain claims cognizable in a timely Rule 37.1 proceeding, the current rules of procedure do not provide a remedy through a Rule 37.1 petition filed outside of the time limitations in Rule 37.2. The trial court's initial review of the petition was restricted to the questions concerning whether the petition met the procedural requisites of our rules, and, once the court determined that the petition was deficient regarding the time requirements, it was required to dismiss the petition without further consideration, because no relief could be granted on the petition.

Appellant clearly cannot prevail on appeal. The trial court correctly denied relief on the petition because no relief could be granted on an untimely petition.

Appeal dismissed; motions moot.