

SUPREME COURT OF ARKANSAS

No. CR 11-148

SHERMAN WATSON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered November 10, 2011

PRO SE MOTIONS FOR EXTENSION
OF TIME TO LODGE RECORD AND
FOR USE OF TRIAL TRANSCRIPT [HOT
SPRING COUNTY CIRCUIT COURT, CR
2007-278, HON. CHRIS E WILLIAMS,
JUDGE]

REMANDED FOR FINDINGS OF FACT.

PER CURIAM

For the third time, this court must remand to the circuit court for findings of fact regarding an appeal by appellant Sherman Watson on the denial of his pro se petition under Arkansas Rule of Criminal Procedure 37.1 (2011). The issue to be resolved in this matter is the date that appellant's Rule 37.1 petition was first tendered to the circuit clerk for filing.

The record first presented to this court in this appeal contained a single petition that was file marked well after the time allowed for filing and, thus, raised a jurisdictional issue, in that the timely filing of a Rule 37.1 petition is jurisdictional. *Watson v. State*, 2011 Ark. 202 (per curiam). The trial court had entered an order sua sponte that directed the clerk to file appellant's petition and indicated that appellant's petition was tendered to the clerk on an earlier date. That order concluded that the court's clerk had failed to file the petition when it was tendered because appellant had not paid a partial filing fee. If appellant had tendered a petition within the required time, but the circuit clerk marked the petition as filed on a later date, the filing date marked would indeed be clerical error. *See Meraż v. State*, 2010 Ark. 121 (citing *White v. State*, 373

Ark. 415, 284 S.W.3d 64 (2008) (per curiam)). The order, however, contained no specific finding as to the date of the earlier tender of the petition.

We remanded for findings of fact as to the date of tender. *Watson*, 2011 Ark. 202. The trial court returned its findings of fact, but failed to provide a finding concerning the date or dates that appellant's petition under Rule 37.1 was first tendered to the circuit clerk, and we remanded once again for an evidentiary hearing and findings of fact. *Watson v. State*, 2011 Ark. 268 (per curiam). On that remand, the trial court conducted a hearing and took evidence, but, once again, returned an order that failed to make specific findings as to the date that the petition was first tendered to the clerk and rejected.

In the hearing conducted on remand, appellant introduced into evidence documents that included a number of receipts showing delivery of materials to the clerk's office and a letter from the clerk dated the last day of the filing period that stated that appellant's petition would not be filed because he had not paid the filing fee. Appellant testified that he mailed his petition to the clerk on three occasions, with the first of those delivered on December 9, 2009, and the remaining two delivered in January 2009. Those dates are within the period for filing a timely petition.

The order returned to us does not provide a firm conclusion as to whether appellant's testimony was credible as to any of the three alleged tenders. Despite the previous order finding that there was a timely tender and references in the latest order to petitions in the file during the time of the later-two alleged tenders, the discussion in the order implies without concluding that the petition may have only been tendered before the mandate issued. In sum, the order does

not provide an answer to the specific question of what date or dates petitions were tendered to the circuit clerk. Rather, the order concludes that the answer to that question is not relevant because appellant was provided a hearing on the matter, regardless of whether the court had jurisdiction to do so.

This court, however, will not assume jurisdiction in this matter until the question is resolved.¹ Accordingly, we remand yet again for findings of fact on the date or dates of tender to the circuit clerk of appellant's Rule 37.1 petition.

Remanded for findings of fact.

¹Appellant has filed two new motions in which he seeks additional time for lodging the record on remand and use of the trial transcript in the proceedings. The record on remand was lodged in a timely manner and that motion is in any case moot. We will not, however, address other motions or otherwise proceed with the appeal until the jurisdictional question is resolved.