

SUPREME COURT OF ARKANSAS

No. CR 11-866

MILTON RAY HENDRIX
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE**Opinion Delivered** January 12, 2012PRO SE MOTIONS FOR EXTENSION
OF TIME TO FILE BRIEF AND FOR
COPY OF RECORD [SEBASTIAN
COUNTY CIRCUIT COURT, FORT
SMITH DISTRICT, CR 2009-1077, HON.
JAMES O. COX, JUDGE]APPEAL DISMISSED; MOTIONS MOOT.**PER CURIAM**

In 2010, appellant Milton Ray Hendrix was found guilty by a jury of second-degree sexual assault, a felony, and fourth-degree sexual assault, a misdemeanor. He was sentenced to serve a term of 240 months' imprisonment in the Arkansas Department of Correction and a term of one year's imprisonment in a county detention facility. The terms were ordered to be served consecutively. We affirmed. *Hendrix v. State*, 2011 Ark. 112, ___ S.W.3d ___. This court's mandate issued on April 19, 2011.

On June 23, 2011, sixty-five days after the mandate issued, appellant filed in the trial court a pro se petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2010). The trial court denied the petition, and appellant has lodged an appeal in this court from the order. Appellant now seeks by pro se motions an extension of time to file his brief-in-chief and a copy of the record.

We need not address the merits of the motions because it is clear from the record that

appellant could not prevail on appeal if the appeal were permitted to go forward. Accordingly, the appeal is dismissed, and the motions are moot. An appeal from an order that denied a petition for postconviction relief will not be permitted to proceed where it is clear that the appellant could not prevail. *Eaton v. State*, 2011 Ark. 432 (per curiam); *Grant v. State*, 2011 Ark. 309 (per curiam); *Lewis v. State*, 2011 Ark. 176 (per curiam); *Kelley v. State*, 2011 Ark. 175 (per curiam); *Morgan v. State*, 2010 Ark. 504 (per curiam); *Goldsmith v. State*, 2010 Ark. 158 (per curiam); *Watkins v. State*, 2010 Ark. 156, ___ S.W.3d ___ (per curiam); *Meraç v. State*, 2010 Ark. 121 (per curiam); *Smith v. State*, 367 Ark. 611, 242 S.W.3d 253 (2006) (per curiam).

The petition filed in the trial court was not timely filed. When a judgment is affirmed on appeal, a petitioner under the rule is required, pursuant to Arkansas Rule of Criminal Procedure 37.2(c), to file his or her petition with the clerk of the trial court within sixty days of the date the mandate was issued following affirmance of the judgment in the case. Appellant did not timely file his petition, and, thus, the petition was subject to dismissal.¹

Time limitations imposed in Rule 37.2(c) for filing a petition are jurisdictional in nature. *Eaton*, 2011 Ark. 432. If the time limitations are not met, a trial court lacks jurisdiction to

¹The petition was also subject to dismissal on the ground that its length exceeded the length allowed for petitions pursuant to Rule 37.1(b), which states that a petition under this rule, “whether handwritten or typed, shall be clearly legible [and] shall not exceed ten pages of thirty lines per page and fifteen words per line.” Appellant’s petition, which included a number of attachments, was twenty-three pages in length. Attachments are considered a part of the petition, and a court is not required to consider a petition that does not conform to Rule 37.1(b). *Murry v. State*, 2011 Ark. 343 (per curiam). This court has held that the rule limiting petitions to ten pages is an entirely reasonable restriction on petitioners seeking postconviction relief. *See Davis v. State*, 2010 Ark. 366 (per curiam); *Sanders v. State*, 352 Ark. 16, 98 S.W.3d 35 (2003).

consider a Rule 37.1 petition. *Id.*; *Sims v. State*, 2011 Ark. 135 (per curiam); *Trice v. State*, 2011 Ark. 74 (per curiam) (citing *Mills v. State*, 2010 Ark. 390 (per curiam)); *Gardner v. State*, 2010 Ark. 344 (per curiam); *Harris v. State*, 2010 Ark. 314 (per curiam); *Crawford v. State*, 2010 Ark. 313 (per curiam). Where the circuit court lacks jurisdiction, the appellate court also lacks jurisdiction. *Clemons v. State*, 2011 Ark. 345 (per curiam); *Grant*, 2011 Ark. 309; *Daniels v. Hobbs*, 2011 Ark. 249 (per curiam); *see also Clark v. State*, 362 Ark. 545, 210 S.W.3d 59 (2005) (citing *Priest v. Polk*, 322 Ark. 673, 912 S.W.2d 902 (1995)).

Appeal dismissed; motions moot.