

## SUPREME COURT OF ARKANSAS

No. CR 12-16

ANTHONY BRYANT WILLIAMSON  
APPELLANT

v.

STATE OF ARKANSAS  
APPELLEE

Opinion Delivered April 19, 2012

PRO SE MOTIONS FOR EXTENSION OF TIME TO FILE APPELLANT'S BRIEF, FOR APPOINTMENT OF COUNSEL, FOR DUPLICATION AT STATE EXPENSE, AND TO AMEND MOTIONS [SEBASTIAN COUNTY CIRCUIT COURT, FORT SMITH DISTRICT, CR 2008-1236, HON. STEPHEN TABOR, JUDGE]

APPEAL DISMISSED; MOTIONS MOOT.

## PER CURIAM

Appellant Anthony Bryant Williamson lodged an appeal in this court from an order by the circuit court denying his petition for postconviction relief under Arkansas Rule of Criminal Procedure 37.1 (2011). He has filed motions in which he seeks an extension of time to file his brief, appointment of counsel, and a copy of the transcript in his case to be provided at State's expense. In addition, appellant has filed four motions to amend each of the motions, including two such motions to amend the motion for extension of time. We dismiss the appeal, and the motions are therefore 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, the circuit court did not have jurisdiction to consider appellant's Rule 37.1 petition, and it is clear that he cannot prevail.

Appellant's petition under Rule 37.1 sought relief from a 2009 conviction for aggravated robbery and kidnapping.<sup>1</sup> Appellant appealed that conviction to the Arkansas Court of Appeals, and that court affirmed. *Williamson v. State*, 2010 Ark. App. 595. The mandate issued from the court of appeals on October 5, 2010.

Arkansas Rule of Criminal Procedure 37.2(c) provides that, where an appeal was taken of the judgment of conviction, a petition under Rule 37.1 must be filed in the trial court within sixty days of the date that the mandate is issued by the appellate court. The last date for appellant to file a timely petition under Rule 37.2(c) was Monday, December 6, 2010.<sup>2</sup> Appellant failed to file a petition in compliance with our rules of procedure prior to the expiration of that deadline.

Appellant filed four Rule 37.1 petitions in the trial court. The first original petition is file-marked on November 29, 2010, and was within the time limitations imposed by Rule 37.2(c). Appellant then filed an amended and supplemented petition on December 22, 2010, a second amended and supplemented petition on January 19, 2011, and a third amended and supplemented petition on April 19, 2011. The order that appellant appeals references only the third amended and supplemented petition as under consideration. Even assuming that the trial

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<sup>1</sup>The judgment reflects that appellant received an aggregate sentence on the charges of 360 months' imprisonment in the Arkansas Department of Correction.

<sup>2</sup>The sixtieth day from the date that the mandate issued was December 4, 2010, but that date fell on a Saturday. Under the calculation set by Arkansas Rule of Criminal Procedure 1.4, the period was extended to the following Monday.

court allowed each of the amendments, only appellant's original petition filed in November was within the time limitations. That petition, however, was not otherwise in compliance with our rules of procedure.

Appellant's original petition for Rule 37.1 relief was not verified. Rule 37.1(c) requires that the petition be accompanied by an affidavit that is sworn before a notary or other officer authorized to administer oaths; in substantially the form noted in that provision; and attesting that the facts stated in the petition are true, correct, and complete. Rule 37.1(d) requires that the circuit clerk reject an unverified petition and that the circuit court or any appellate court must dismiss a petition that fails to comply with Rule 37.1(c). *See Stephenson v. State*, 2011 Ark. 506 (per curiam). Of the four petitions that appellant filed, only the last two amended petitions, those filed in January and April 2011, included an affidavit.

The verification requirement for a postconviction-relief petition is of substantive importance to prevent perjury. *Tucker v. State*, 2011 Ark. 543 (per curiam). We have held that a circuit court lacks jurisdiction to consider arguments raised in an unverified Rule 37.1 petition. *Stephenson*, 2011 Ark. 506. Because appellant's original Rule 37.1 petition was not in compliance with Rule 37.1(c), it should not have been accepted for filing, and that petition did not act to confer jurisdiction on the trial court to consider the merits of a later-filed amendment to the petition. Only appellant's amended petitions, filed well after the time limitations had past, included an affidavit for verification.

Those two later petitions, filed after the time deadline, were not sufficient to independently—that is, without reference back to an earlier, timely petition—confer jurisdiction

on the trial court to consider appellant's claims for Rule 37.1 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).

Appellant did not file a timely petition for postconviction relief that was sufficient to confer jurisdiction on the trial court to consider his claims for relief. Without an original timely petition in compliance with our rules, the trial court had no jurisdiction to consider appellant's later-filed amended petitions. We dismiss the appeal, because the trial court was, and therefore this court is, without jurisdiction to consider appellant's claims.

Appeal dismissed; motions moot.