

SUPREME COURT OF ARKANSAS

No. CR 12-270

DONALD WINNETT

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered September 27, 2012

PRO SE MOTION TO FILE A
BELATED BRIEF [SALINE COUNTY
CIRCUIT COURT, CR 06-523, HON.
GARY ARNOLD, JUDGE]APPEAL DISMISSED; MOTION
MOOT.**PER CURIAM**

Appellant Donald Winnett lodged an appeal in this court from the Saline County Circuit Court's denial of appellant's motion to withdraw a guilty plea under Arkansas Rule of Criminal Procedure 26.1 (2011). Appellant has filed a motion to file a belated brief, in which he seeks to file a nonconforming brief that he has tendered in the appeal. We need not consider the merits of that motion, however, because it is clear that appellant cannot prevail on appeal. 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. *Wells v. State*, 2012 Ark. 308 (per curiam); *see also Crain v. State*, 2009 Ark. 512 (per curiam).

The motion to withdraw his plea that appellant filed in the circuit court on February 2, 2012, sought to challenge a judgment entered August 7, 2007, reflecting appellant's entry on August 2, 2007, of a negotiated plea of guilty to the offense of rape. Rule 26.1 plainly states that a guilty plea may not be withdrawn under the rule after entry of judgment. Ark. R. Crim. P. 26.1(a). Where an appellant has filed a motion to withdraw his plea after entry

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of judgment, the court may treat the motion as one for postconviction relief under Arkansas Rule of Criminal Procedure 37.1. *Webb v. State*, 365 Ark. 22, 223 S.W.3d 796 (2006).

Even if the circuit court had treated the petition as one for relief under Rule 37.1, the petition was not timely filed. Arkansas Rule of Criminal Procedure 37.2, as in effect both at the time of appellant's conviction and currently, provides that a petition claiming relief under Rule 37.1 must be filed no later than ninety days after the entry of judgment if the conviction was obtained on a plea of guilty. Ark. R. Crim. P. 37.2(c) (2007 & 2011). Appellant's petition was filed more than four years after the judgment had been entered.

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. *Talley v. State*, 2012 Ark. 314 (per curiam); *Tucker v. State*, 2012 Ark. 216 (per curiam); *Barrow v. State*, 2012 Ark. 197; *Tolliver v. State*, 2012 Ark. 46 (per curiam); *Hendrix v. State*, 2012 Ark. 10 (per curiam); *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. The appeal is dismissed, and appellant's motion is moot.

Appeal dismissed; motion moot.

Donald Winnett, pro se appellant.

No response.