

## SUPREME COURT OF ARKANSAS

No. CR 12-627

FRANK WATTS II

APPELLANT

V.

HON. WENDELL GRIFFEN, CIRCUIT  
JUDGE

APPELLEE

Opinion Delivered February 7, 2013

PRO SE PETITION FOR WRIT OF  
MANDAMUS [PULASKI COUNTY  
CIRCUIT COURT, CR 97-2871]

PETITION MOOT.

## PER CURIAM

Petitioner Frank Watts II was convicted in 1997 of multiple felony offenses. The jury found petitioner to be a habitual offender, and an aggregate term of life imprisonment was imposed. No appeal was taken.<sup>1</sup> Petitioner later filed a petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2000), which was dismissed as untimely. *See Watts v. State*, CR 01-544 (Ark. June 21, 2001) (unpublished per curiam). Subsequent attempts by petitioner to pursue postconviction relief under Rule 37.1 were also dismissed. *See Watts v. State*, CR 05-149 (Ark. May 26, 2005) (unpublished per curiam) (holding that motion to vacate judgment under Arkansas Rule of Civil Procedure 60 (2005) was properly treated as a petition for postconviction relief under Rule 37.1); *Watts v. State*, CR 02-1217 (Ark. Mar. 20, 2003) (unpublished per curiam) (dismissing appeal of petitioner's "renewed" petition for postconviction relief).

On February 28, 2012, petitioner filed in the Pulaski County Circuit Court a pleading

---

<sup>1</sup>Appellant later filed a motion for belated appeal, which was denied. *See Watts v. State*, CR 00-201 (Ark. Sept. 28, 2000) (unpublished per curiam).

entitled, “Motion To Vacate A Void Judgment,” in which he alleged that the trial court had lacked subject-matter jurisdiction to convict appellant. On April 18, petitioner filed a notice of appeal, contending that his motion had been deemed denied by operation of law on or about March 28, 2012.<sup>2</sup> Subsequently, petitioner filed in this court the petition for writ of mandamus that is now before us, asking that we direct the circuit court to enter an order disposing of appellant’s February 28, 2012 motion.

In its response to petitioner’s petition for writ of mandamus, the appellee State argued that the circuit court had in fact acted upon appellant’s February 28, 2012 motion, and the State appended to its response a copy of the circuit court’s order denying the petition, which was entered on July 31, 2012. The petition for writ of mandamus is therefore moot. *See Nelson v. Glover*, 2012 Ark. 307 (per curiam) (holding that, where a circuit court has acted on the underlying motion, a petition for writ of mandamus is moot).

Petition moot.

*Frank Watts II*, pro se appellant.

No response.

---

<sup>2</sup>While appellant’s pleading was styled as a motion to vacate the trial court’s judgment, as we have already explained to appellant in a prior decision, such a motion is viewed as a petition for postconviction relief. *See Watts*, CR 05-149, slip op. at 2 (Ark. May 26, 2005). A petition that seeks postconviction relief cognizable under Rule 37.1 is governed by that rule regardless of the label placed on it by a petitioner. *See Hill v. State*, 2012 Ark. 309 (per curiam). The deemed-denied provision of Arkansas Rule of Criminal Procedure 33.3 (2011) does not apply to petitions for postconviction relief pursuant to Rule 37.1. *See McJames v. State*, 2010 Ark. 74.