

SUPREME COURT OF ARKANSAS

No. CR 12-642

DONALD WINNETT

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered October 25, 2012

APPELLEE'S MOTION TO DISMISS
APPEAL [PRO SE APPEAL FROM THE
SALINE COUNTY CIRCUIT COURT,
CR 06-523, HON. GARY M. ARNOLD,
JUDGE]MOTION GRANTED.**PER CURIAM**

Appellant Donald Winnett pled guilty to rape on August 2, 2007, in the Saline County Circuit Court, and he was sentenced to 240 months' incarceration in the Arkansas Department of Correction. On January 24, 2012, appellant filed in the circuit court a pleading that he captioned, "Motion/Petition to Vacate and/or Modifer [sic] Plus Correct The Judgment Pursuant to Ark. Ct. Rule 60(I) and Fed. R. 60(B)(3)." The circuit court denied the motion on May 2, 2012, and appellant timely filed a notice of appeal.

Now before us is the appellee State's motion to dismiss the appeal. In the motion, the State argues that appellant's original pleading was nothing more than an untimely petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2007), and that, because the petition was not timely, the circuit court lacked jurisdiction to consider it. We agree, and appellant's appeal is dismissed.

We first note that, despite appellant's invoking of Arkansas Rule of Civil Procedure 60 (2011) and Federal Rule of Civil Procedure 60 (2011), his motion is clearly a collateral attack

on the judgment entered against him, and it is more properly considered a petition for Rule 37.1 relief.¹ See *Carroll v. State*, 2012 Ark. 100 (per curiam). 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. *Hill v. State*, 2012 Ark. 309 (per curiam) (citing *Gonder v. State*, 2011 Ark. 248, ___ S.W.3d ___ (per curiam)).

As a petition for postconviction relief, appellant's petition was untimely. When a defendant pleads guilty, a petition for postconviction relief must be filed in circuit court within ninety days of the entry of judgment against him. See Ark. R. Crim. P. 37.2(c) (2007). Appellant filed his petition over four years after his guilty plea was entered, and his petition is therefore untimely under Rule 37.2. The time limits in Rule 37.2 are jurisdictional in nature, and, if they are not met, a circuit court lacks jurisdiction to grant postconviction relief. *Talley v. State*, 2012 Ark. 314 (per curiam) (citing *Wright v. State*, 2011 Ark. 356 (per curiam)); *Miller v. State*, 2011 Ark. 344 (per curiam); *McLeod v. State*, 2010 Ark. 95 (per curiam). Where the circuit court lacks jurisdiction, the appellate court also lacks jurisdiction. *Martin v. State*, 2012 Ark. 312 (per curiam).

Because appellant's petition was an untimely petition for postconviction relief, the circuit court lacked jurisdiction to entertain it, and this court lacks jurisdiction to address the petition on appeal. Appellee's motion to dismiss the appeal is therefore granted.

Motion granted.

¹Appellant offered nothing to demonstrate that the federal rule applied to his postconviction claims, and we have consistently held that our Rule 60 does not provide an avenue for postconviction relief. See *White v. State*, 2011 Ark. 355 (per curiam) (citing *Morgan v. State*, 2010 Ark. 504 (per curiam)).