

# ARKANSAS SUPREME COURT

No. CR 08-1211

WALTER CURTIS MOLES  
Appellant

v.

STATE OF ARKANSAS  
Appellee

Opinion Delivered      January 15, 2009

APPELLEE'S MOTION TO DISMISS  
APPEAL [CIRCUIT COURT OF  
PULASKI COUNTY, CR 2002-2155,  
HON. JOHN W. LANGSTON, JUDGE]

MOTION GRANTED; APPEAL  
DISMISSED.

## PER CURIAM

In 2002, appellant Walter Curtis Moles entered a plea of guilty to furnishing a prohibited article and was sentenced to 180 months' imprisonment. This term is to run concurrently to appellant's federal sentence, which is being served in federal custody. No appeal was taken from the judgment.

In 2008, appellant filed in the trial court various pro se motions in which he belatedly sought postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1. Therein, appellant asked that his DNA sample be taken prior to his release from federal custody, which he claimed was a condition of entering his guilty plea. The trial court denied the relief sought, and appellant has lodged the instant appeal from that denial.

Now before us is appellee State's motion to dismiss the appeal for lack of jurisdiction. As appellant could not be successful on appeal, appellee's motion is granted and the appeal is dismissed. 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. *Johnson v. State*, 362 Ark. 453, 208

S.W.3d 783 (2005) (per curiam).

Arkansas Rule of Criminal Procedure Rule 37.2(c) provides that a petition under the rule must be filed within ninety days of the date the judgment was entered if a petitioner entered a plea of guilty. Here, appellant entered his guilty plea on November 11, 2002. More than five years had elapsed when he sought Rule 37.1 postconviction relief. Time limitations imposed in Rule 37.2(c) are jurisdictional in nature, and if they are not met, a trial court lacks jurisdiction to consider a Rule 37.1 petition. *Shaw v. State*, 363 Ark. 156, 211 S.W.3d 506 (2005). Here, as the trial court lacked jurisdiction to consider appellant's Rule 37.1 petition, jurisdiction over the appeal cannot be conferred to this court. *Id.*

Motion granted; appeal dismissed.