

ARKANSAS SUPREME COURT

No. CR 08-1280

FRANK WATTS II
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered January 30, 2009

APPELLANT'S PRO SE MOTION TO
DISMISS APPEAL [CIRCUIT COURT
OF PULASKI COUNTY, CR 97-2871,
HON. WILLARD PROCTOR, JR.,
JUDGE]

MOTION GRANTED IN PART AND
DENIED IN PART; APPEAL
DISMISSED.

PER CURIAM

On July 1, 2008, appellant Frank Watts II filed a motion in the trial court under Arkansas Code Annotated § 16-90-111 (Supp. 2003) to vacate his conviction and sentence on a judgment entered on January 21, 1999, alleging that the judgment violated the prohibition on double jeopardy because the charges had been joined with other charges in a case previously concluded. The trial court denied the motion as untimely. Appellant lodged an appeal of that order in this court, and has now filed a motion to dismiss the appeal.

Appellant requests that we dismiss his appeal without prejudice, contending that he should be permitted to refile his motion to vacate at a later date. We grant the motion to dismiss, but we do so with prejudice because it is clear that appellant's appeal is without merit.

The trial court correctly determined that appellant's motion under section 16-90-111 was untimely. Appellant's claims in the motion were cognizable in a petition under Arkansas Rule of Criminal Procedure 37.1. Where a petitioner's arguments are issues that would be cognizable in a

petition under Rule 37.1, section 16-90-111 is superseded to the extent that it conflicts with the time limitations for postconviction relief under Arkansas Rule of Criminal Procedure 37.2(c). *Grant v. State*, ___ Ark. ___, ___ S.W.3d ___ (Feb. 7, 2008) (per curiam). Where the judgment was not appealed, Arkansas Rule of Criminal Procedure 37.2(c) requires that a petition for postconviction relief under Rule 37.1 must be filed within ninety days of the date of entry of judgment.

The judgment that appellant sought to vacate was not appealed and his motion in this court for belated appeal was denied. *Watts v. State*, CR 00-201 (Ark. Sept. 28, 2000) (per curiam). Whether appellant sought relief under the statute or under Rule 37.1, his application for the relief requested must have been filed within ninety days of the date of entry of judgment. Appellant's petition was filed more than nine years after that date, and was therefore not timely as either a request for relief under section 16-90-111 or under Rule 37.1. In addition, we note that the two judgments, which appellant claims violate double jeopardy, indicate convictions for different offenses occurring on differing dates. Because appellant cannot prevail, we dismiss the appeal with prejudice.

Motion granted in part and denied in part; appeal dismissed.