

ARKANSAS SUPREME COURT

No. CR 08-1316

KIARA SMITH
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered March 19, 2009

PRO SE MOTIONS FOR
APPOINTMENT OF COUNSEL,
DISCOVERY, EXTENSION OF TIME,
AND FOR AMENDED BRIEF AND
PRO SE PETITION FOR WRIT OF
MANDAMUS [CIRCUIT COURT OF
MISSISSIPPI COUNTY,
CHICKASAWBA DISTRICT, CR 96-17,
HON. CINDY THYER, JUDGE]

APPEAL DISMISSED; MOTIONS AND
PETITION MOOT.

PER CURIAM

A judgment entered in Mississippi County Circuit Court on August 15, 2006, reflects that appellant Kiara Smith was found guilty of robbery in a trial to the court and sentenced to 48 months' imprisonment as a result of the revocation of a previous suspended imposition of sentence. On May 27, 2008, appellant filed two petitions to correct an illegal sentence under Arkansas Code Annotated § 16-90-111 (Supp. 2003). The trial court entered an order denying the petitions on August 21, 2008, and appellant lodged an appeal of the order in this court.

Appellant brings a number of motions in which he requests appointment of counsel, discovery, an extension of time, and permission to file an amended brief, apparently to address issues concerning the second petition to correct an illegal sentence. Appellant has also filed in this appeal a petition for writ of mandamus seeking to obtain a copy of the order denying the petitions from the

circuit clerk. Because it is clear that appellant cannot prevail, we dismiss the appeal and the motions and petition for writ of mandamus are moot. This court has consistently held that an appeal of the denial of postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *Booth v. State*, 353 Ark. 119, 110 S.W.3d 759 (2003) (per curiam).

In each of the two petitions under section 16-90-111, petitioner raised a number of claims. The claims included allegations of ineffective assistance of counsel and insufficient evidence in both petitions, allegations of speedy trial violations, coercion, an inadequate indictment, that the period of the suspension of sentence had lapsed prior to the revocation, a failure to follow proper interrogation procedures, and judicial bias. Because appellant raised claims that would be cognizable in a petition for relief under Arkansas Rule of Criminal Procedure 37.1, appellant's petitions were subject to the time restraints for such petitions set forth in Arkansas Rule of Criminal Procedure 37.2. *See Grant v. State*, ___ Ark. ___, ___ S.W.3d ___ (Feb. 7, 2008) (per curiam).

Where a petition includes 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 Rule 37.2(c). *Id.* Appellant did not appeal his conviction. Where a conviction was not appealed, Rule 37.2(c) requires that the petition for postconviction relief must be filed within ninety days of the entry of the judgment. In this case, the judgment was entered more than a year before appellant filed the petitions. The time limitations imposed in Rule 37.2(c) are jurisdictional in nature, and the circuit court may not grant relief on an untimely petition. *Womack v. State*, 368 Ark. 341, 245 S.W.3d 154 (2006) (per curiam). The circuit court could not grant relief on either of the petitions contained in the record and it is clear that appellant cannot prevail.

Appeal dismissed; motions and petition moot.