

ARKANSAS SUPREME COURT

No. CR 08-1258

ADAM S. PEPPERS
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered January 15, 2009

PRO SE MOTION FOR BELATED
APPEAL OF JUDGMENT OF
CONVICTION [CIRCUIT COURT OF
CRAIGHEAD COUNTY, WESTERN
DISTRICT, CR 98-818, HON. JOHN N.
FOGLEMAN, JUDGE]

MOTION DISMISSED.

PER CURIAM

On May 3, 1999, judgment was entered reflecting that petitioner Adam S. Peppers had entered a plea of guilty to a charge of murder in the first degree and been sentenced to 420 months' imprisonment. On August 8, 2008, petitioner filed in the trial court a pro se petition pursuant to Arkansas Rule of Criminal Procedure 37.1 seeking to vacate the judgment. The petition was denied on the ground that it was not timely filed.¹

On October 30, 2008, petitioner filed the instant pro se motion seeking leave to proceed with

¹When a guilty plea is entered, a petition pursuant to Rule 37.1 must be filed in accordance with Arkansas Rule of Criminal Procedure 37.2(c) within ninety days of the date the judgment of conviction in a criminal case was entered. Here, petitioner filed the petition approximately nine years after the judgment in his case was entered. The time limits set out in Rule 37.2(c) are jurisdictional in nature, and the circuit court may not grant relief on a untimely petition for postconviction relief. *Maxwell v. State*, 298 Ark. 329, 767 S.W.2d 303 (1989). On the day petitioner filed the instant motion for belated appeal, October 30, 2008, he also lodged an appeal in this court from the Rule 37.1 order, *Peppers v. State*, CR 08-1266.

a belated appeal of the judgment entered in 1999. He argues that his attorney's failure to properly represent him in the trial court when he entered the guilty plea caused him to file the untimely 37.1 petition. He argues that he is entitled to both a belated appeal of the judgment and to proceed with a Rule 37.1 petition on the merits despite the late filing of the Rule 37.1 petition.

We first note that pursuant to Arkansas Rule of Appellate Procedure--Criminal 1, there is ordinarily no right to appeal from a judgment entered on a plea of guilty. The exceptions are: a conditional plea of guilty premised on an appeal of the denial of a suppression motion pursuant to Arkansas Rule of Criminal Procedure 24.3(b); when there is a challenge to testimony or evidence presented before a jury in a sentencing hearing separate from the plea itself; when the appeal is from a posttrial motion challenging the validity and legality of the sentence itself. *See Seibs v. State*, 357 Ark. 331, 166 S.W.3d 16 (2004); *see also Bradford v. State*, 351 Ark. 394, 94 S.W.3d 904 (2003). Absent one of the exceptions, a defendant waives his right to appeal when he pleads guilty. *Berry v. City of Fayetteville*, 354 Ark. 470, 125 S.W.3d 171 (2003); *Barnett v. State*, 336 Ark. 165, 984 S.W.2d 444 (1999). Petitioner here has not demonstrated that his plea was subject to appeal.

Moreover, even if petitioner had demonstrated in this motion for belated appeal that he was entitled to appeal from the judgment entered on a plea of guilty, the motion was not timely filed as to the judgment. Belated appeals in criminal cases are governed by Rule 2(e) of the Rules of Appellate Procedure--Criminal. The rule provides in pertinent part that no motion for belated appeal shall be entertained by the Supreme Court unless application has been made to the Supreme Court within eighteen months of the date of entry of judgment. The eighteen-month period to file a motion for belated appeal in the case at issue elapsed in 2000. An untimely motion for belated appeal is subject to dismissal. *Hayes v. State*, 328 Ark. 95, 940 S.W.2d 886 (1997) (per curiam). As

petitioner failed to file the motion within the period allowed by Rule 2(e), the motion is dismissed.

Motion dismissed.