

# ARKANSAS SUPREME COURT

No. CR 07-709

JACQUELYNE VELCOFF  
Appellant

v.

STATE OF ARKANSAS  
Appellee

Opinion Delivered January 22, 2009

PRO SE APPEAL FROM THE CIRCUIT  
COURT OF CLARK COUNTY, CR  
2003-187, HON. JOHN A. THOMAS,  
JUDGE

APPEAL DISMISSED.

## PER CURIAM

In 2005, appellant Jacquelyne Velcoff was found guilty by a jury of twenty counts of rape involving her daughter who was less than fourteen years old at the time. She was sentenced to 168 months' imprisonment on each count to be served concurrently. The Arkansas Court of Appeals affirmed. *Velcoff v. State*, CACR 05-950 (Ark. App. Nov. 8, 2006).

Thereafter, appellant filed in the trial court a petition pursuant to Arkansas Rule of Criminal Procedure 37.1 based upon ineffective assistance of counsel. The trial court denied the petition. She then filed a motion for reconsideration and a motion for appointment of counsel, and the trial court denied both motions. Appellant has now lodged an appeal in this court.

Because this court has no jurisdiction over the appeal, it is dismissed. Whether an appellant has filed an effective notice of appeal is always an issue before the appellate court. *Bilyeu v. State*, 342 Ark. 271, 27 S.W.3d 400 (2000). The filing of a notice of appeal is jurisdictional. *Brady v. Alken*, 273 Ark. 147, 617 S.W.2d 358 (1981). Absent an effective notice of appeal, this court lacks

jurisdiction to consider the appeal and must dismiss it. *See Pannell v. State*, 320 Ark. 250, 895 S.W.2d 911 (1995).

The trial court denied appellant's Rule 37.1 petition in an order entered on March 27, 2007.<sup>1</sup> On April 16, 2007, appellant filed the motions noted above in the trial court, which included a motion that was captioned as a motion for reconsideration.<sup>2</sup> The trial court denied the motions in an order entered on June 6, 2007, but signed on May 24, 2007. On June 29, 2007, appellant filed a notice of appeal in the trial court that sought an appeal from the order signed on May 24, 2007.

A notice of appeal of a judgment or order must be filed within thirty days from entry of the final judgment or order. Ark. R. App. P.–Crim. 2(a)(4). Under Arkansas Rule of Appellate Procedure–Criminal 2(a), in addition to the requirement of being timely filed, a notice of appeal must sufficiently identify the judgment or order from which an appeal is being taken.

The notice of appeal in the instant matter was filed more than thirty days after entry of the March 27, 2007 order that denied the Rule 37.1 petition. Also, the notice of appeal clearly identified the May 24, 2007 order that denied the motion for reconsideration as the basis for the appeal. Therefore, no valid appeal was taken from the order that denied the Rule 37.1 petition.

Although the notice of appeal was timely filed as to the order that denied the motion for reconsideration, the motion afforded appellant no relief as it failed to identify an omitted issue that

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<sup>1</sup>Neither the Rule 37.1 petition nor the order of denial were made part of the record on appeal. Although appellant included both of these documents in the addendum portion of her brief, the failure of the record to contain these documents would have been fatal to her appeal had the court obtained jurisdiction over this matter. The party asserting error has the burden to produce a record sufficient to demonstrate prejudicial error, and this court does not consider evidence not included in the record on appeal. *Smith v. State*, 343 Ark. 552, 39 S.W.3d 739 (2001).

<sup>2</sup>Arkansas Rule of Criminal Procedure 37.2(d) states that the trial court's decision as to a Rule 37.1 petition is final and that no petitions for rehearing shall be considered. Nevertheless, a motion for reconsideration may be allowed if the appellant is requesting that the court address an omitted issue. *Beshears v. State*, 340 Ark. 70, 8 S.W.3d 32 (2000) (citing *Matthews v. State*, 333 Ark. 701, 970 S.W.2d 289 (1998) (per curiam)).

she wished the trial court to reconsider. The motion was instead a plea for legal representation and filed contemporaneously with the motion for appointment of counsel. As the motion for reconsideration failed to state a valid basis for relief, appellant could not prevail on that motion, and we will not allow the appeal to go forward. *See Morgan v. State*, 360 Ark. 264, 200 S.W.3d 890 (2005) (per curiam).

In sum, appellant failed to properly establish appellate jurisdiction over this matter as there is no notice of appeal filed from the trial court's denial of the Rule 37.1 petition, and appellant cannot prevail on her appeal from the trial court's denial of the motion for reconsideration. Because this court lacks jurisdiction to consider the appeal, we must dismiss it. *Pannell, supra*.

Appeal dismissed.