

# ARKANSAS SUPREME COURT

No. CR 08-1289

JASON WHEAT  
Appellant

v.

STATE OF ARKANSAS  
Appellee

Opinion Delivered February 5, 2009

PRO SE MOTIONS FOR  
APPOINTMENT OF COUNSEL AND  
EXTENSION OF TIME TO FILE  
APPELLANT'S BRIEF [CIRCUIT  
COURT OF FAULKNER COUNTY, CR  
2000-556, CR 2000-588, CR 2000-623,  
CR 2000-758, HON. DAVID L.  
REYNOLDS, JUDGE]

APPEAL DISMISSED; MOTIONS  
MOOT.

## PER CURIAM

In 2003, appellant Jason Wheat entered a plea of guilty to a number of felony charges in four different criminal matters.<sup>1</sup> He was sentenced to an aggregate term of 600 months' imprisonment. No appeal was taken from the judgment of conviction. Subsequently, appellant sought postconviction relief in each case pursuant to Arkansas Rule of Criminal Procedure 37.1. The joint petition was dismissed by the trial court as being untimely filed.

In 2008, appellant filed in the trial court a joint pro se petition in the same criminal cases to vacate an invalid plea agreement in violation of Arkansas Rule of Criminal Procedure 25.3(b). The

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<sup>1</sup>The multiple guilty pleas at issue comprised a single judgment and commitment order that was entered in the four cases in Faulkner County Circuit Court. In Case No. CR 2000-556, appellant entered a plea of guilty to third-degree domestic battering and first-degree terroristic threatening. In CR 2000-588, he entered a plea of guilty to residential burglary, kidnapping and two counts of sexual abuse, reduced from rape. In CR 2000-623, he entered a plea of guilty to intimidating a witness. In CR 2000-758, he entered a plea of guilty to kidnapping and aggravated assault. Appellant also references CR 2003-912 here; however, the charge in that case was dismissed upon entry of an order of nolle prosequi.

trial court denied the petition, and appellant has lodged an appeal here from the order.

Now before us are appellant's motions for appointment of counsel and extension of time to file his brief in chief.<sup>2</sup> 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. *See Johnson v. State*, 362 Ark. 453, 208 S.W.3d 783 (2005) (per curiam). As appellant could not be successful on appeal, the appeal is dismissed and the motions are moot.

Petitions to vacate or withdraw a guilty plea, when filed after entry of the judgment, are properly treated as petitions for postconviction relief pursuant to Rule 37.1. *See State v. Wilmoth*, 369 Ark. 346, 255 S.W.3d 419 (2007). Thus Rule 37.1 governs appellant's request for relief in this matter.

Appellant cannot prevail here because the petition to vacate an invalid plea agreement constituted an untimely Rule 37.1 petition. Appellant's 2008 petition under Rule 37.1 was not filed within ninety days from the date that the 2003 judgment was entered as required under Arkansas Rule of Criminal Procedure 37.2(c). Time limitations imposed in Rule 37.2(c) are jurisdictional in nature, and if they are not met, a trial court lacks jurisdiction to grant relief. *Maxwell v. State*, 298 Ark. 329, 767 S.W.2d 303 (1989).

Appeal dismissed; motions moot.

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<sup>2</sup>Appellant later filed a pro se motion to disregard the motion for extension of time and to be allowed to file his brief-in-chief. As the appeal is dismissed, this motion is moot.