

SUPREME COURT OF ARKANSAS

No. CR 11-148

SHERMAN WATSON
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered May 5, 2011

PRO SE PETITION FOR WRIT OF
CERTIORARI AND MOTIONS TO
AMEND PETITION, FOR
TRANSCRIPT, AND TO
SUPPLEMENT THE RECORD [HOT
SPRING COUNTY CIRCUIT
COURT, CR 2007-278, HON. CHRIS
E WILLIAMS, JUDGE]

MOTION TO SUPPLEMENT
GRANTED; REMANDED FOR
FINDINGS OF FACT.

PER CURIAM

In 2008, a jury found appellant Sherman Watson guilty of a felony count of theft of property and a misdemeanor count of theft of property and sentenced him to an aggregate term of 240 months' imprisonment. Appellant appealed from the felony conviction, and the Arkansas Court of Appeals affirmed. *Watson v. State*, 2009 Ark. App. 745. Appellant filed in the trial court a pro se petition under Arkansas Rule of Criminal Procedure 37.1 (2010) that was denied.

Appellant filed a timely notice of appeal of the order denying postconviction relief. Appellant then filed a petition for writ of certiorari with a partial record requesting that this court instruct the circuit clerk to bring up the record. The circuit clerk later tendered, within the time to lodge the appeal, a more complete record. Appellant has filed a motion to

supplement the record with the tendered record. In addition, appellant has filed a motion to amend the petition for writ of certiorari and a motion for access to the transcript. In the motion to amend the petition for writ of certiorari, appellant contends that the transcripts for certain proceedings were not included in the record or tendered record; he requests that those missing portions of the record be transcribed and included in the record. In his motion for transcript, appellant requests that he be allowed access to the trial transcript. We grant appellant's motion to supplement the record with the more complete record tendered, and we remand for findings of fact concerning the date of tender of the petition in order to resolve the question of jurisdiction that is presented here.

In order to determine whether this court has jurisdiction to consider the appeal, the first question we must address concerns whether the trial court had jurisdiction to consider appellant's Rule 37.1 petition. *Sims v. State*, 2011 Ark. 135 (per curiam) (where the circuit court lacks jurisdiction, the appellate court also lacks jurisdiction). The filing date noted on appellant's Rule 37.1 petition indicates that it was filed well after the last date for filing under Arkansas Rule of Criminal Procedure 37.2. Because appellant appealed the judgment, the petition was due within sixty days of the date that the mandate issued. Ark. R. Crim. P. 37.2(c). The court of appeals's mandate issued on December 1, 2009, and appellant's Rule 37.1 petition was file-marked March 11, 2010.

The time limitations in Rule 37.2(c) are jurisdictional in nature, and, if those requirements are not met, a trial court lacks jurisdiction to grant postconviction relief. *Gardner*

v. State, 2010 Ark. 344 (per curiam). In this case, appellant moved for, and the court granted, leave to file his petition belatedly. There is, however, no provision in the rule for a belated petition. *Id.*

In addition to the order granting the belated petition, the court entered an order sua sponte that directed the clerk to file appellant's petition. In that order, the court appears to indicate that appellant's petition, which was filed on March 11, 2010, was apparently tendered to the clerk earlier, and that the court's clerk had failed to file the petition because appellant had not paid a partial filing fee.

We cannot ascertain the actual date of tender of the petition in this case. Accordingly, we remand to the trial court for factual findings concerning the date of tender. The circuit court shall return its findings of fact, along with a transcript of any hearing on the matter, within ninety days from the date of this order. Further action on the pending appeal is delayed until the findings and hearing transcript are received.

Motion to supplement granted; remanded for findings of fact.