

Charles HIGGINS *v.* STATE of Arkansas

CR 06-1323

252 S.W.3d 132

Supreme Court of Arkansas
Opinion delivered March 8, 2007

APPEAL & ERROR — MOTION TO DISMISS APPEAL DENIED — ISSUES SHOULD BE FULLY BRIEFED ON APPEAL. — The State moved to dismiss appellant's appeal alleging that his petition was not timely filed under Ark. R. Crim. P. 37.2(c) and that he was attempting to appeal the denial of a motion for reconsideration of his petition for post-conviction relief in violation of Ark. R. Crim. P. 37.2(d); whether the circuit court erred in denying the petition based on its being untimely and whether the relief sought under the motion for reconsideration may be considered should be fully briefed on appeal; the State's motion was denied.

Motion to Dismiss Appeal; denied.

Dana A. Reece, for appellant.

Mike Beebe, Att'y Gen., by: *Brad Newman*, Ass't Att'y Gen., for appellee.

PER CURIAM. Charles Higgins appeals an Order entered July 25, 2006, and an Amended Order entered August 8, 2006, denying his Rule 37 petition for post-conviction relief. The

State moves this court to dismiss Higgins's appeal alleging that Higgins's petition was not timely filed under Rule 37.2(c) and that he is attempting to appeal the denial of a motion for reconsideration of his petition for postconviction relief in violation of Ark. R. Crim. P. 37.2(d).

[1] Pursuant to Ark. R. Crim. P. 37.2(d) the decision of the circuit court in any proceeding filed under Rule 37 is final when the judgment is rendered and no petition for rehearing may be considered. Pursuant to his notice of appeal, Higgins seeks review of the denial of his petition for postconviction relief as well as the denial of his motion asserting the clerk's office is responsible for his petition not being file-stamped until June 21, 2006. We note that the pleading captioned "Motion for Reconsideration" did not seek reconsideration of any decision on the petition itself; rather, it attempted to bring to the circuit court's attention that the Rule 37 petition was received in the Pulaski County Clerk's Office before the time to file the petition ran but was not file-stamped until after that date had passed. Whether the circuit court erred in denying the petition based on its being untimely and whether the relief sought under the motion for reconsideration may be considered should be fully briefed on appeal. The State's motion is denied.
