

Derrick Lamont BOOTH *v.* STATE of Arkansas

CR 03-1

110 S.W.3d 759

Supreme Court of Arkansas
Opinion delivered May 1, 2003

1. APPEAL & ERROR — POSTCONVICTION RELIEF — APPEAL OF DENIAL NOT PERMITTED TO GO FORWARD WHERE APPELLANT CLEARLY COULD NOT PREVAIL. — An appeal of the denial of postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail.
2. APPEAL & ERROR — POSTCONVICTION RELIEF — TIME LIMITATIONS UNDER ARK. R. CRIM. P. 37 JURISDICTIONAL IN NATURE. — Time limitations imposed in Ark. R. Crim. P. 37 are jurisdictional in nature; a circuit court cannot grant relief on an untimely petition.
3. APPEAL & ERROR — APPELLEE'S MOTION TO DISMISS APPEAL GRANTED — APPELLANT'S MOTION TO FILE BELATED BRIEF MOOT. — Where appellant did not file his petition within ninety days of either the judgment or the amended judgment in his case, as required by Ark. R. Crim. P. 37.2(c), the supreme court granted appellee's motion to dismiss and held that appellant's motion to file a belated brief was moot.

Appellee's Motion to Dismiss Appeal granted; Appellant's Motion to File Belated Brief moot.

Appellant, pro se.

No response.

PER CURIAM. On June 4, 2002, judgment was entered reflecting that Derrick Lamont Booth had entered a negotiated plea of guilty to driving while intoxicated. A sentence of one year's imprisonment in a regional punishment facility was imposed. An amended judgment was entered on June 27, 2002, directing that the sentence be served in the Arkansas Department of Correction.

On December 2, 2002, Booth filed in the trial court a petition for postconviction relief, pursuant to Criminal Procedure Rule 37.1, challenging the amended judgment. The petition was denied, and Booth lodged an appeal from the order in this court. Appellant Booth did not file the appellant's brief by the date it was due. The State now asks that the appeal be dismissed. In a *pro se* motion appellant seeks leave to file a belated brief.

[1] The appellee's motion to dismiss the appeal is granted because the Rule 37.1 petition filed in the trial court was untimely, and thus appellant was procedurally barred from proceeding under the rule. Appellant's motion to file a belated brief is moot. This court has consistently held that an appeal of the denial of postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996); *Harris v. State*, 318 Ark. 599, 887 S.W.2d 514 (1994); *Reed v. State*, 317 Ark. 286, 878 S.W.2d 376 (1994); see *Chambers v. State*, 304 Ark. 663, 803 S.W.2d 932 (1991); *Johnson v. State*, 303 Ark. 560, 798 S.W.2d 108 (1990); *Williams v. State*, 293 Ark. 73, 732 S.W.2d 456 (1987).

[2] Criminal Procedure Rule 37.2(c) provides in pertinent part that a petition under the rule is untimely if not filed within ninety days of the date the judgment was entered on a plea of guilty. Appellant did not file his petition under the rule within ninety days of either the judgment or the amended judgment in his case. Time limitations imposed in Criminal Procedure Rule 37 are jurisdictional in nature, and a circuit court cannot grant relief on an untimely petition. *Benton v. State*, 325 Ark. 246, 925 S.W.2d 401 (1996); *Hamilton v. State*, 323 Ark. 614, 918 S.W.2d 113 (1996); *Harris v. State*, 318 Ark. 599, 887 S.W.2d 514 (1994); *Maxwell v. State*, 298 Ark. 329, 767 S.W.2d 303 (1989).

[3] Appellee's motion to dismiss appeal granted; appellant's motion to file a belated brief moot.