

SUPREME COURT OF ARKANSAS

No. CR 11-501

ABRAHAM GRANT
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered July 27, 2011

PRO SE MOTION FOR EXTENSION
OF TIME TO FILE BRIEF [PHILLIPS
COUNTY CIRCUIT COURT, CR
2001-272, HON. RICHARD
PROCTOR, JUDGE]

APPEAL DISMISSED; MOTION
MOOT.

PER CURIAM

In 2003, appellant Abraham Grant was found guilty by a jury of capital murder and first-degree battery and sentenced to an aggregate term of life imprisonment without parole. We affirmed. *Grant v. State*, 357 Ark. 91, 161 S.W.3d 785 (2004).

In 2011, appellant filed in the trial court a pro se petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2011), challenging the subject-matter jurisdiction of the trial court, and a motion to proceed *in forma pauperis* with respect to the Rule 37.1 petition. In an order entered April 26, 2011, the court denied the motion to proceed as an indigent, and appellant lodged an appeal here. He now seeks by pro se motion an extension of time to file his brief-in-chief.

We need not address the merits of the motion because it is clear from the record that appellant could not prevail on appeal if the appeal were permitted to go forward. Accordingly,

the appeal is dismissed, and the motion is moot. An appeal from an order that denied a petition for postconviction relief will not be permitted to proceed where it is clear that the appellant could not prevail. *Lewis v. State*, 2011 Ark. 176 (per curiam); *Kelley v. State*, 2011 Ark. 175 (per curiam); *Morgan v. State*, 2010 Ark. 504 (per curiam); *Goldsmith v. State*, 2010 Ark. 158 (per curiam); *Watkins v. State*, 2010 Ark. 156, 362 S.W.3d 910 (per curiam); *Meraz v. State*, 2010 Ark. 121 (per curiam); *Smith v. State*, 367 Ark. 611, 242 S.W.3d 253 (2006) (per curiam).

The Rule 37.1 petition filed by appellant was not timely filed, and, thus, he was not entitled to proceed as an indigent with respect to it. If a direct appeal is taken from a judgment of conviction, and the judgment is affirmed on appeal, a Rule 37.1 petition must be filed within sixty days of the date the mandate was issued by the appellate court. Ark. R. Crim. P. 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 consider a Rule 37.1 petition. *Sims v. State*, 2011 Ark. 135 (per curiam); *Trice v. State*, 2011 Ark. 74 (per curiam) (citing *Mills v. State*, 2010 Ark. 390 (per curiam)); *Gardner v. State*, 2010 Ark. 344 (per curiam); *Harris v. State*, 2010 Ark. 314 (per curiam); *Crawford v. State*, 2010 Ark. 313 (per curiam).

Appellant filed his petition almost seven years after the mandate issued in his case. As such, the trial court was without jurisdiction to consider it. *Sims*, 2011 Ark. 135. Where the circuit court lacks jurisdiction, the appellate court also lacks jurisdiction. *Id.*; see also *Clark v. State*, 362 Ark. 545, 210 S.W.3d 59 (2005) (citing *Priest v. Polk*, 322 Ark. 673, 912 S.W.2d

Cite as 2011 Ark. 309

902 (1995)). Accordingly, an appeal from either the Rule 37.1 order or the order denying leave to proceed *in forma pauperis* with respect to the Rule 37.1 proceeding is subject to dismissal for lack of jurisdiction.

Appeal dismissed; motion moot.