

SUPREME COURT OF ARKANSAS

No. CR 11-583

JAMES E. CLEMONS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered September 8, 2011

PRO SE MOTION FOR EXTENSION OF TIME TO FILE BRIEF [UNION COUNTY CIRCUIT COURT, CR 2008-156, HON. HAMILTON SINGLETON, JUDGE]

APPEAL DISMISSED; MOTION MOOT.

PER CURIAM

In 2009, appellant James E. Clemons was found guilty by a jury of capital murder and sentenced to life imprisonment without parole. We affirmed. *Clemons v. State*, 2010 Ark. 337, 369 S.W.3d 710.

On December 27, 2010, appellant filed in the trial court a thirty-three-page pro se brief that he entitled, “Brief in Support of a Petition for Post-conviction Relief.” On May 20, 2011, the trial court entered an order in which the court referred to both a timely ten-page petition for postconviction relief and to appellant’s thirty-three-page brief. The trial court declined to consider the brief, as it exceeded the ten-page limit for petitions under Arkansas Rule of Criminal Procedure 37.1(b) (2011), and merely reiterated the grounds raised in the petition. The court denied the petition, and appellant has lodged an appeal in this court from the order. Appellant 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).

In the certification of the record, the trial court clerk avers that no Rule 37.1 petition had been filed in her office. As the trial judge considered the allegations in appellant's Rule 37.1 petition, it appears likely that appellant mailed his petition directly to the trial judge without ever filing it with the clerk. If so, this court has held that delivering a petition to the circuit judge is not the equivalent of filing the petition with the circuit clerk. *Meraz*, 2010 Ark. 121 (citing *Benton v. State*, 325 Ark. 246, 925 S.W.2d 401 (1996) (per curiam)). Filing the petition *with the circuit clerk* is critical to the trial court's jurisdiction to consider the merits of the petition. *Id.* (emphasis added).

If appellant desired to proceed under the rule, his petition should have been filed with the clerk within sixty days of the date the mandate was issued following this court's affirmance of the judgment in his case. He did not do so, and the time limitations imposed in Rule 37.2(c) for filing a petition are jurisdictional in nature. 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*



Cite as 2011 Ark. 345

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). Where the circuit court lacks jurisdiction, the appellate court also lacks jurisdiction. *Daniels v. Hobbs*, 2011 Ark. 249 (per curiam); *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 902 (1995)). Accordingly, the appeal must be dismissed inasmuch as there is no timely filed Rule 37.1 petition in the record on appeal.

Appeal dismissed; motion moot.