

SUPREME COURT OF ARKANSAS

No. CR 11-1037

MARION EDWARD RIDDELL
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered January 12, 2012

APPELLANT'S PRO SE MOTION FOR COPY OF TRIAL TRANSCRIPT AT PUBLIC EXPENSE AND APPELLEE'S MOTIONS TO DISMISS APPEAL AND FOR EXTENSION OF BRIEF TIME [GARLAND COUNTY CIRCUIT COURT, CR 2008-61, HON. MARCIA HEARNSBERGER, JUDGE]

APPELLEE'S MOTION TO DISMISS APPEAL GRANTED; APPELLEE'S MOTION FOR BRIEF TIME AND APPELLANT'S MOTION FOR COPY OF TRIAL TRANSCRIPT MOOT.**PER CURIAM**

In 2010, appellant Marion Edward Riddell was found guilty by a jury of rape and sentenced to life imprisonment. We affirmed. *Riddell v. State*, 2011 Ark. 21. This court's mandate issued on February 15, 2011.

On August 2, 2011, 168 days after the mandate issued, appellant filed in the trial court a pro se petition for "belated" postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2011). The trial court denied the petition, and appellant has lodged an appeal in this court from the order.

Appellant now seeks by pro se motion a copy of the transcript of his trial. The appellee has filed a motion asking that the appeal be dismissed for lack of jurisdiction and a motion for

extension of time to file its brief if the motion to dismiss is denied.

The appellee's motion to dismiss the appeal is granted. The appellee's motion for extension of brief time and the appellant's motion for transcript are moot. It is clear from the record that appellant could not prevail on appeal if the appeal were permitted to go forward. 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. *Eaton v. State*, 2011 Ark. 432 (per curiam); *Grant v. State*, 2011 Ark. 309 (per curiam); *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, ___ S.W.3d ___ (per curiam); *Meraç v. State*, 2010 Ark. 121 (per curiam); *Smith v. State*, 367 Ark. 611, 242 S.W.3d 253 (2006) (per curiam).

The petition filed in the trial court was not timely filed. When a judgment is affirmed on appeal, a petitioner under the rule is required, pursuant to Arkansas Rule of Criminal Procedure 37.2(c), to file his or her petition with the clerk of the trial court within sixty days of the date the mandate was issued following affirmance of the judgment in the case. Appellant did not timely file his petition, and, thus, the petition was subject to dismissal.¹

Time limitations imposed in Rule 37.2(c) for filing a petition are jurisdictional in nature.

¹In a motion filed in the trial court with the Rule 37.1 petition, appellant urged the court to allow him to file a belated petition on the ground that his attorney did not inform him of the date that the mandate issued. This court has held, however, that, having pursued a direct appeal, the burden is on the petitioner in a Rule 37.1 proceeding to determine when the mandate in his or her case was issued on direct appeal. *Lamar v. State*, 2011 Ark. 310 (per curiam); see also *O'Brien v. State*, 339 Ark. 138, 3 S.W.3d 332 (1999).

Eaton, 2011 Ark. 432. If the time limitations are not met, a trial court lacks jurisdiction to consider a Rule 37.1 petition. *Id.*; *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); *Cranford v. State*, 2010 Ark. 313 (per curiam). Where the circuit court lacks jurisdiction, the appellate court also lacks jurisdiction. *Clemons v. State*, 2011 Ark. 345 (per curiam); *Grant*, 2011 Ark. 309; *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)).

Appellee's motion to dismiss appeal granted; appellee's motion for brief time and appellant's motion for transcript moot.