

SUPREME COURT OF ARKANSAS

No. CR 12-141

KENNETH TUCKER, JR.
APPELLANT
v.
STATE OF ARKANSAS
APPELLEE

Opinion Delivered May 17, 2012

PRO SE MOTIONS TO STAY BRIEFING SCHEDULE, FOR EXTENSION OF BRIEF TIME AND FOR WRIT OF CERTIORARI, AND AMENDED PETITION FOR REVIEW [ASHLEY COUNTY CIRCUIT COURT, CR 09-36, HON. SAM POPE, JUDGE]

APPEAL DISMISSED; MOTIONS MOOT; AMENDED PETITION FOR REVIEW STRUCK.

PER CURIAM

In 2009, an Ashley County jury found appellant Kenneth Tucker, Jr., guilty of two counts of delivery of a controlled substance for which he was sentenced to an aggregate term of 360 months' imprisonment. The Arkansas Court of Appeals affirmed. *Tucker v. State*, 2010 Ark. App. 489.

Appellant then timely filed in the trial court a pro se petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2011) that was denied. Appellant appealed from the order. This court dismissed the appeal on the ground that the Rule 37.1 petition was not verified as required by Rule 37.1(c). *Tucker v. State*, 2011 Ark. 543 (per curiam).

On January 18, 2012, shortly after the Rule 37.1 appeal was dismissed, appellant filed in the trial court a second petition pursuant to Rule 37.1. The petition was denied on the grounds that it was not timely filed and that it was an unauthorized second petition. Appellant has lodged an appeal of the order in this court.

Now before us are appellant's motions seeking to stay the briefing schedule, for an extension of time to file his brief, and for a writ of certiorari to complete the record. Appellant has also filed a pleading styled, "amended petition for review." The amended petition is stricken inasmuch as it appears to argue the merits of his direct appeal. The instant appeal pertains only to the denial by the trial court of appellant's Rule 37.1 petition, not to issues on direct appeal.

Because the petition for Rule 37.1 relief was indeed untimely, we dismiss the appeal. The motions are moot.

An appeal from an order that denied a petition for a postconviction remedy will not be permitted to go forward where it is clear that the appellant could not prevail. *Carroll v. State*, 2012 Ark. 100 (per curiam); *Fernandez v. State*, 2011 Ark. 418, ___ S.W.3d ___ (per curiam); *Hill v. State*, 2011 Ark. 419 (per curiam); *Croft v. State*, 2010 Ark. 83 (per curiam); *Crain v. State*, 2009 Ark. 512 (per curiam).

When there is an appeal from a judgment of conviction, a petition for relief must be filed in the trial court within sixty days of the date that the mandate was issued by the appellate court pursuant to Arkansas Rule of Criminal Procedure 37.2(c). The time limitations imposed in Rule 37.2(c) are jurisdictional in nature, and, if the petition is not filed within that period, a trial court lacks jurisdiction to grant postconviction relief. *Romero v. State*, 2012 Ark. 133 (per curiam); *Watson v. State*, 2011 Ark. 202 (per curiam); *Sims v. State*, 2011 Ark. 135 (per curiam); *Trice v. State*, 2011 Ark. 74 (per curiam); *Gardner v. State*, 2010 Ark. 344 (per curiam).

Appeal dismissed; motions moot; amended petition for review struck.