

SUPREME COURT OF ARKANSAS

No. CR 12-55

BRANDON CARTER

PETITIONER

v.

HON. LARRY CHANDLER, CIRCUIT
JUDGE

RESPONDENT

Opinion Delivered May 31, 2012

PRO SE PETITION FOR WRIT OF
MANDAMUS [COLUMBIA COUNTY
CIRCUIT COURT, CR 06-64, HON.
LARRY CHANDLER, JUDGE]

PETITION GRANTED.

PER CURIAM

Petitioner, Brandon Carter, was convicted of two counts of aggravated robbery and one count of first-degree battery, for which he was sentenced to a total of 100 years' imprisonment. The Arkansas Court of Appeals affirmed. *Carter v. State*, 2010 Ark. App. 611. Subsequently, petitioner filed a petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2010), in which petitioner asserted five claims of ineffective assistance of counsel. The petition for postconviction relief was denied by the circuit court following an evidentiary hearing. Because the court's order failed to provide a ruling as to each claim in the Rule 37.1 petition, petitioner subsequently filed a motion for modification.

Now before us is petitioner's pro se petition for writ of mandamus, asking this court to compel the circuit court to respond to petitioner's motion for modification. Because a petition for writ of mandamus is the appropriate remedy in such circumstances, we grant the petition.

While Arkansas Rule of Criminal Procedure 37.2(d) states that "no petition for rehearing shall be considered" following the denial of a petition for postconviction relief, we have

specifically held that a request that the trial court modify its order to include an omitted issue is not a request for a rehearing that is prohibited by this rule. *See, e.g., Beshears v. State*, 340 Ark. 70, 8 S.W.3d 32 (2000). Furthermore, where a petitioner requests the circuit court to provide a ruling on an omitted issue and the circuit court fails to do so, the petitioner is not without recourse; he or she may file a petition for writ of mandamus in this court, requesting that this court direct the circuit court to act on the motion to provide the requested ruling(s). *Strain v. State*, 2012 Ark. 184, ___ S.W.3d ___ (per curiam).

In its response to the petition for writ of mandamus, the State argues that, pursuant to Arkansas Rule of Appellate Procedure—Civil 4(b)(1) (2010), petitioner’s motion for modification was deemed denied thirty days after petitioner filed it. However, we have held that the “deemed denied” provision of Rule 4(b) does not apply to Rule 37.1 appeals. *See Morgan v. State*, 360 Ark. 264, 200 S.W.3d 890 (2005) (per curiam); *see also Young v. State*, 373 Ark. 264, 283 S.W.3d 188 (2008) (per curiam) (agreeing with the State that the deemed-denied appellate rule does not apply to appeals in proceedings on a Rule 37.1 petition); *accord Wells v. Philhours*, 2010 Ark. 182 (per curiam) (twelve months elapsed between date pleading filed and date of order); *White v. Glover*, 2010 Ark. 166 (per curiam) (twelve months elapsed between date pleading filed and date of order). Thus, the State’s argument is without merit.¹

Arkansas Rule of Criminal Procedure 37.3(c) requires that, where a hearing is held on a Rule 37.1 petition, “the court shall determine the issues and make written findings of fact and

¹Because the State’s argument regarding the deemed-denied provision is without merit, its related contention that the record on appeal was due in this court within ninety days of the date that the State claims that appellant’s motion was deemed denied is also without merit.

conclusions of law with respect thereto.” Because the circuit court in the instant case failed to provide the required rulings on each of the issues raised in petitioner’s Rule 37.1 petition, and because petitioner properly filed a motion for modification to obtain the missing rulings, his petition for writ of mandamus is granted. *See Strain*, 2012 Ark. 184, ___ S.W.3d ___. The circuit court is directed to act upon petitioner’s pending motion.

Petitioner’s notice of appeal shall be treated as having been filed the day after the modified order is entered by the circuit court. *See Lewis v. State*, 2012 Ark. 255 (per curiam). Petitioner’s lodging of the record on appeal and his brief-in-chief are due within the time limitations set forth in Arkansas Rule of Appellate Procedure—Criminal 4(b) and Rule 4-4 of the Rules of the Arkansas Supreme Court (2011), respectively.

Petition granted.