

SUPREME COURT OF ARKANSAS

No. CR 12-793

ANDRA LEMAN BATES

PETITIONER

V.

STATE OF ARKANSAS

RESPONDENT

Opinion Delivered October 11, 2012

PRO SE MOTION FOR BELATED
APPEAL OF ORDER [PULASKI
COUNTY CIRCUIT COURT, 60CR-
08-1789, HON. LEON JOHNSON,
JUDGE]

MOTION DENIED.

PER CURIAM

In 2009, judgment was entered reflecting that petitioner Andra Lemman Bates had been found guilty of multiple felony offenses. He was sentenced as a habitual offender to an aggregate term of 504 months' imprisonment. The Arkansas Court of Appeals affirmed. *Bates v. State*, 2010 Ark. App. 417. The court of appeals's mandate was issued on June 2, 2010.

On January 20, 2012, more than eighteen months after the mandate was issued, petitioner filed in the trial court a pro se petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2011). On May 24, 2012, the trial court denied the petition on the ground that it was untimely filed. Petitioner did not timely file a notice of appeal from the order as required by Arkansas Rule of Appellate Procedure—Criminal 2(a)(4) (2011), and he now seeks leave to proceed with a belated appeal.

We need not consider the merits of the motion for belated appeal because it is clear from the record that petitioner could not prevail if an appeal were permitted to go forward.

An appeal from an order that denied a petition for postconviction relief will not be allowed to proceed where it is clear that the appellant could not prevail. *Martin v. State*, 2012 Ark. 312 (per curiam); *Watson v. State*, 2012 Ark. 27 (per curiam); *Riddell v. State*, 2012 Ark. 11 (per curiam); *Hendrix v. State*, 2012 Ark. 10 (per curiam); *Croft v. State*, 2010 Ark. 83 (per curiam); *Crain v. State*, 2009 Ark. 512 (per curiam). In this case, the circuit court did not have jurisdiction to consider petitioner's Rule 37.1 petition because the petition was not timely filed.¹

Pursuant to Arkansas Rule of Criminal Procedure 37.2(c) (2011), when there was 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. 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. *Talley v. State*, 2012 Ark. 314 (per curiam); *Tucker v. State*, 2012 Ark. 216; *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); *O'Brien v. State*, 339 Ark. 138, 3 S.W.3d 332 (1999); *Benton v. State*, 325 Ark. 246, 925 S.W.2d 401 (1996). The petition before the

¹The petition was also subject to dismissal on the ground that its length exceeded the length allowed for petitions pursuant to Rule 37.1(b), which states that a petition under this rule, "whether handwritten or typed, shall be clearly legible [and] shall not exceed ten pages of thirty lines per page and fifteen words per line." Appellant's petition was seventeen pages in length. A court is not required to consider a petition that does not conform to Rule 37.1(b). *Hatton v. State*, 2012 Ark. 286 (per curiam); *Murry v. State*, 2011 Ark. 343 (per curiam). This court has held that the rule limiting petitions to ten pages is an entirely reasonable restriction on petitioners seeking postconviction relief. See *Davis v. State*, 2010 Ark. 366 (per curiam); *Sanders v. State*, 352 Ark. 16, 98 S.W.3d 35 (2003).

trial court was not timely filed, and, thus, the trial court had no jurisdiction to grant the relief sought. The trial court did not err in denying the petition.

Motion denied.

Andra Leman Bates, pro se appellant.

No response.