

**SUPREME COURT OF ARKANSAS**

No. CR 13-33

JAMES A. HOLLIDAY

PETITIONER

V.

STATE OF ARKANSAS

RESPONDENT

Opinion Delivered February 7, 2013

PRO SE MOTION FOR RULE ON  
CLERK [BENTON COUNTY CIRCUIT  
COURT, CR 08-1190, HON. ROBIN F.  
GREEN, JUDGE]

MOTION DENIED.

**PER CURIAM**

On April 7, 2009, judgment was entered reflecting that petitioner James A. Holliday had been found guilty of sexual assault in the second degree and rape. He was sentenced to an aggregate term of 720 months' imprisonment. The Arkansas Court of Appeals affirmed. *Holliday v. State*, 2010 Ark. App. 705. The court of appeals's mandate was issued on November 16, 2010.

On August 22, 2012, approximately twenty-one months after the mandate was issued, petitioner filed in the trial court a pro se request for postconviction relief that he titled, "Motion to Modify Original Sentence." In the petition, petitioner contended that he had not been afforded effective assistance of counsel in the trial court. The trial court treated the motion as a petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2012) and dismissed it on the ground that it was untimely filed. Petitioner timely filed a notice of appeal from the order, but he did not tender the record to this court within ninety days of the date of the notice of appeal as required by Rule 4(b) of the Arkansas

Rules of Appellate Procedure—Criminal (2012). Now before us is petitioner’s motion for rule on clerk, seeking leave to lodge the record belatedly and proceed with the appeal.

We need not consider the merits of the motion for rule on clerk 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. *Bates v. State*, 2012 Ark. 394 (per curiam); *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.

The trial court was correct to consider the motion as a Rule 37.1 petition for postconviction relief. We have consistently held that, regardless of the label placed on a pleading, a pleading that mounts a collateral attack on a judgment is governed by the provisions of our postconviction rule, Arkansas Rule of Criminal Procedure 37.1. *Winnett v. State*, 2012 Ark. 404 (per curiam); *Evans v. State*, 2012 Ark. 375 (per curiam); *Carroll v. State*, 2012 Ark. 100 (per curiam); *Bell v. State*, 2011 Ark. 379 (per curiam) (citing *Lewis v. State*, 2011 Ark. 176 (per curiam)); *Wright v. State*, 2011 Ark. 356 (per curiam).

Pursuant to Arkansas Rule of Criminal Procedure 37.2(c), 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. *Bates*, 2012 Ark. 394; *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 trial court was not timely filed, and, thus, the trial court had no jurisdiction to grant the relief sought. Where the circuit court lacks jurisdiction, the appellate court also lacks jurisdiction. *Winnett*, 2012 Ark. 404; *Martin*, 2012 Ark. 312.

Motion denied.

*James A. Holliday*, pro se petitioner.

No response.