

SUPREME COURT OF ARKANSAS

No. CR13-36

JACQUES SLOCUM

APPELLANT

v.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered February 21, 2013PRO SE MOTIONS TO WITHDRAW
APPEAL WITHOUT PREJUDICE
[APPEAL FROM PULASKI COUNTY
CIRCUIT COURT, 60CR 11-4387,
HON. CHRISTOPHER CHARLES
PIAZZA, JUDGE]APPEAL DISMISSED; MOTIONS
MOOT.**PER CURIAM**

On June 19, 2012, appellant Jacques Slocum was convicted of second-degree murder, endangering the welfare of a minor, and fleeing. With enhancements for the use of a firearm and the commission of certain crimes in the presence of a minor, appellant received a total sentence of 1188 months' imprisonment in the Arkansas Department of Correction. A notice of appeal was filed on July 17, 2012. The direct appeal is still pending as case CACR 12-849 in the Arkansas Court of Appeals.

Appellant, acting pro se, filed a petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2012) on July 19, 2012. This petition was dismissed without prejudice by the circuit court on September 21, 2012, and the order of dismissal explained that the circuit court was without jurisdiction to consider the petition while appellant's direct appeal of his conviction was pending. On October 17, 2012, appellant filed a timely notice of appeal from the order that dismissed his Rule 37.1 petition.

Now before us are appellant's two pro se motions to withdraw the Rule 37.1 appeal without prejudice. We need not consider the motions, however, inasmuch as we dismiss the appeal for lack of jurisdiction, and the motions are accordingly moot.

Rule 37.2(a) mandates, "If the conviction in the original case was appealed to the Supreme Court or Court of Appeals, then no proceedings under this rule shall be entertained by the circuit court while the appeal is pending." If a petition is filed after the appellate court has affirmed the conviction, but before the appellate court's mandate has issued, the petition is considered filed as of the date that the mandate issues. *See* Ark. R. Crim. P. 37.2(c)(ii). However, a petition that is filed before the appellate court has ruled on the direct appeal is not given the same leeway, as we have explicitly held that an appellant cannot simultaneously pursue a direct appeal and Rule 37.1 relief. *See Haynes v. State*, 311 Ark. 651, 846 S.W.2d 179 (1993).

Because appellant's Rule 37.1 petition was filed two days after his direct appeal from the conviction, the petition was untimely. The time limitations imposed in Rule 37.2 are jurisdictional in nature, and, if those requirements are not met, a trial court lacks jurisdiction to grant postconviction relief. *Harrison v. State*, 2012 Ark. 149 (per curiam); *Tolliver v. State*, 2012 Ark. 46 (per curiam); *Talley v. State*, 2011 Ark. 497 (per curiam). Where the circuit court lacks jurisdiction, the appellate court also lacks jurisdiction. *Harrison*, 2012 Ark. 149; *Talley*, 2011 Ark. 497. Appellant's appeal is accordingly dismissed, and his motions are moot.

Appeal dismissed; motions moot.