

**SUPREME COURT OF ARKANSAS**

No. CR-13-168

JAMES J. MURPHY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered May 30, 2013

APPELLANT'S PRO SE MOTION FOR  
EXTENSION OF TIME TO FILE  
BRIEF [PULASKI COUNTY CIRCUIT  
COURT, 60CR 99-4186, HON. LEON  
JOHNSON, JUDGE]APPEAL DISMISSED; MOTION  
MOOT.**PER CURIAM**

In 2002, appellant James J. Murphy was found guilty by a jury of first-degree murder and sentenced to a term of 480 months' imprisonment. The Arkansas Court of Appeals affirmed. *Murphy v. State*, CACR 02-1300 (Ark. App. Sept. 17, 2003) (unpublished). The mandate of the court of appeals issued on October 7, 2003.

After the mandate issued, appellant filed in the trial court a series of pro se petitions for postconviction relief. The first was filed in 2009 pursuant to Arkansas Rule of Criminal Procedure 37.1 (2002). Filed with the Rule 37.1 petition were a motion for a copy of his trial transcript to be used in the Rule 37.1 proceeding and a motion for sanctions in which he contended that the circuit clerk had not provided documents needed for the Rule 37.1 proceeding. The second postconviction petition was a petition for reduction of sentence under Arkansas Code Annotated section 16-90-111 (Supp. 2006) filed in 2010, and the third was a petition to correct an illegal sentence under section 16-90-111 filed in 2012.

In 2012, the trial court denied the Rule 37.1 petition and the two petitions under section

16-90-111 in one order and denied the two motions related to the Rule 37.1 petition in a second order. Appellant has lodged an appeal in this court that encompasses both orders. Now before us is appellant's motion for extension of time to file his brief-in-chief.

The Rule 37.1 petition and the petitions under section 16-90-111 were not timely filed; thus, appellant could not succeed on appeal from the denial of those petitions. The motions for transcript and sanctions pertained to the Rule 37.1 petition, and, as the Rule 37.1 petition was not timely, appellant was entitled to no relief on the motions. As it is clear from the record that appellant could not prevail if the appeal were permitted to go forward, the appeal is dismissed, and the motion for extension of brief time is moot. An appeal from an order that denied a petition for postconviction relief will not be permitted to proceed where it is clear that the appellant could not prevail. *Davis v. State*, 2013 Ark. 118 (per curiam); *Holliday v. State*, 2013 Ark. 47 (per curiam).

The trial court treated the two petitions under section 16-90-111 as Rule 37.1 petitions, which a court is permitted to do when the claims raised were cognizable under the Rule, and, to the extent that a claim is cognizable under the Rule, the statute has been superseded. *Hickman v. State*, 2012 Ark. 359 (per curiam); *Talley v. State*, 2012 Ark. 314 (per curiam). A petition that seeks postconviction relief cognizable under Rule 37.1 is governed by that rule regardless of the label placed on it by a petitioner. *Purifoy v. State*, 2013 Ark. 26 (per curiam). Any allegation that can be considered under Rule 37.1 is subject to the time limitations contained in the Rule. *Lambert v. State*, 2012 Ark. 310 (per curiam).

Pursuant to Arkansas Rule of Criminal Procedure 37.2(c)(ii), 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. Appellant's Rule 37.1 petition was filed six years after the mandate was issued in his case. 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 v. State*, 2012 Ark. 394 (per curiam); *O'Brien v. State*, 339 Ark. 138, 3 S.W.3d 332 (1999) (per curiam). The petition before the trial court was not timely filed; 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 v. State*, 2012 Ark. 404 (per curiam).

Even if the trial court had not considered the two section 16-90-111 petitions as Rule 37.1 petitions, the petitions were also untimely under the statute. Section 16-90-111(a) allows a circuit court to correct a sentence imposed in an illegal manner within the time allowed under the statute for a reduction of sentence, and section 16-90-111(b)(1) requires that an order under the statute that reduces a sentence must be entered within sixty days after the mandate is issued upon affirmance of the judgment. *See Reynolds v. State*, 2011 Ark. 5 (per curiam). Neither petition was filed within the time limits allowed by the statute.

With the exception of allegations of ineffective assistance of counsel, the claims that appellant alleged in the petition filed in 2012 to correct an illegal sentence were claims of mere trial error and constitutional violations that were not sufficient to demonstrate that the judgment was absolutely void. As such, those claims should have been raised at trial and on the record on direct appeal, not in a petition for postconviction relief. *See Davis v. State*, 2013 Ark. 118 (per

curiam). Appellant's arguments concerning ineffective assistance of counsel were also not cognizable under Arkansas Code Annotated section 16-90-111. Those claims were cognizable in a Rule 37.1 petition and should have been filed in a timely petition pursuant to Rule 37.1. *See Hickman*, 2012 Ark. 359 (citing *Talley*, 2012 Ark. 314).

Appeal dismissed; motion moot.

*James J. Murphy*, pro se appellant.

No response.