

Cite as 2018 Ark. 193
SUPREME COURT OF ARKANSAS
No. CR-18-10

LEE CHARLES MILLSAP, JR.
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered: May 24, 2018

PRO SE MOTION FOR USE OF THE
RECORD ON APPEAL AS A PAUPER
AND FOR EXTENSION OF TIME TO
FILE APPELLANT'S ABSTRACT, BRIEF,
AND ADDENDUM; PRO SE MOTION
TO WITHDRAW MOTION FOR USE
OF RECORD [PULASKI COUNTY
CIRCUIT COURT, SEVENTH
DIVISION, NO. 60CR-97-865]

APPEAL DISMISSED; MOTIONS MOOT.

SHAWN A. WOMACK, Associate Justice

Appellant Lee Charles Millsap, Jr., appeals from the denial of his pro se second amended Rule 37.1 petition. Pending before this court is Millsap's motion for use of the record on appeal and for an extension of time to file his brief. Millsap subsequently filed a pro se motion to withdraw his request for access to the record, but continues to seek an extension to file his brief.¹ Because Millsap's pro se second amended petition was untimely and successive, we dismiss the appeal, which renders the motions moot.

¹Millsap tendered his brief when he filed his pro se motion to withdraw motion for access to the record.

In June 1998, Millsap pleaded guilty to capital murder, terroristic threatening, and second-degree battery in the stabbing death of his fiancée. He was sentenced to life imprisonment without the possibility of parole and two six-year terms to run concurrently with the life sentence. Millsap thereafter sought relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (1998), claiming his plea of guilty was the result of ineffective assistance of counsel. The petition was denied by the trial court. On appeal, we affirmed the trial court's order, holding that the guilty plea had been entered knowingly, intelligently, and voluntarily with the assistance of competent counsel. *Millsap v. State*, CR-99-437 (Ark. Sept. 21, 2000) (unpublished per curiam). Millsap filed his second amended petition in the trial court in January 2017. The trial court denied the petition, finding that it had previously addressed and denied Millsap's claims for postconviction relief that were raised in the original Rule 37.1 petition filed in 1999.

An appeal from an order that denied a petition for postconviction relief will not be permitted to go forward when it is clear that the appellant could not prevail. *Ortega v. State*, 2017 Ark. 365, 533 S.W.3d 68. Here, Millsap filed a second amended petition for postconviction relief nearly twenty years after the judgment of conviction had been entered in his case. Pursuant to Rule 37.2(c) (1998) of the Arkansas Rules of Criminal Procedure, when a conviction is obtained on a plea of guilty and no appeal is taken, a petitioner must file his or her Rule 37.1 petition in the appropriate court within ninety days of the date sentence was pronounced. Millsap's second Rule 37.1 petition is clearly untimely and is procedurally barred. *Maxwell v. State*, 298 Ark. 329, 767 S.W.2d 303 (1989). The time

limitations imposed in Rule 37.2(c) are mandatory, and the trial court may not grant relief on an untimely petition. *Latham v. State*, 2018 Ark. 44.

Moreover, Rule 37.2(b) provides that all grounds for relief must be raised in the original petition filed under the rule. A petitioner is not entitled to file a second petition under the rule unless the original petition was specifically denied without prejudice as to filing a subsequent petition. *McCuen v. State*, 328 Ark. 46, 941 S.W.2d 397 (1997). This court has consistently upheld the rule that a petitioner is limited to one petition for postconviction relief. *Id.* Millsap's original Rule 37.1 petition was denied with prejudice, and this court affirmed the denial on appeal. *Millsap*, CR-99-437 (Ark. Sept. 21, 2000). Because Millsap is not entitled to file a subsequent, untimely petition we dismiss his appeal, which renders his motions moot.

Appeal dismissed; motions moot.