

Cite as 2018 Ark. 204  
**SUPREME COURT OF ARKANSAS**  
No. CV-18-164

ABRAHAM GRANT

APPELLANT

V.

WENDY KELLEY, DIRECTOR,  
ARKANSAS DEPARTMENT OF  
CORRECTION

APPELLEE

Opinion Delivered June 7, 2018

PRO SE MOTION PURSUANT TO  
RULE 60 RELIEF FROM JUDGMENT  
ORDER WITH LEAVE OF THE  
APPELLANT [SIC] COURT; PRO SE  
MOTION FOR ARKANSAS RULE OF  
CIVIL PROCEDURE 55 DEFAULT  
[LINCOLNCOUNTY CIRCUIT COURT,  
NO. 40CV-17-90]

APPEAL DISMISSED; MOTIONS MOOT.

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JOHN D. KEMP, Chief Justice

This is an appeal from an order entered by the circuit court denying appellant Abraham Grant's pro se motion for relief from judgment filed pursuant to Rule 60 of the Arkansas Rules of Civil Procedure (2017). Grant's Rule 60 motion sought relief from the circuit court's order that had denied his pro se petition for writ of habeas corpus wherein he had alleged that the judgment of conviction in his criminal case was illegal on its face because he had been initially charged with first-degree murder but was convicted of capital murder.<sup>1</sup> Grant did not appeal the order entered by the circuit court that denied his pro se

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<sup>1</sup>In 2003, Grant was found guilty by a jury of capital murder and first-degree battery. An aggregate sentence of life without parole was imposed. This court affirmed. *Grant v. State*, 357 Ark. 91, 161 S.W.3d 785 (2004). Grant's previous claim for postconviction relief that he was arrested for first-degree murder and subsequently charged with capital

petition for a writ of habeas corpus. As stated, this appeal is from the denial of his motion under Rule 60 only. After the record on appeal was lodged here, Grant filed a second pro se motion titled pro se motion for Arkansas Rule 60 (b) relief. In the body of his motion he references Rule 60(c) as a basis for this court to vacate the circuit court's ruling. In his motion, Grant asks this court to address the merits of his habeas petition despite the fact that he failed to file a notice of appeal from the order denying the habeas petition. Grant also subsequently filed a motion for default judgment pursuant to Arkansas Rule of Civil Procedure 55 (2017), wherein Grant alleges that he is entitled to a default judgment due to the State's failure to respond to his Rule 60 motion.

An appeal from an order that denied a petition for postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. See *Brown v. State*, 2017 Ark. 232, 522 S.W.3d 791 (citing *Justus v. State*, 2012 Ark. 91). Rule 60(b) provides, in pertinent part, that the court may at any time correct clerical mistakes in judgments, decrees, or orders arising from oversight or omission. Because neither Rule 60(b) nor Rule 60(c) are applicable as an avenue for relief from a judgment of conviction or from an order that denies a petition for writ of habeas corpus or other request for postconviction relief, we dismiss the appeal, which renders the motion moot. *Ibsen v.*

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murder has been rejected by this court as a ground for coram nobis relief. *Grant v. State*, 2014 Ark. 466 (per curiam). In denying his petition for coram nobis relief, this court noted that the issue had been previously addressed and rejected in an appeal from the denial of a petition filed by Grant pursuant to Arkansas Code Annotated section 16-90-111 (Repl. 2003). See *Grant v. State*, CR-07-784, slip. op. (Ark. Feb. 7, 2008).

*Plegge*, 341 Ark. 225, 15 S.W.3d 686 (2000) (we know of no case in which the court has applied Rule 60 of the Arkansas Rules of Civil Procedure to a criminal proceeding); *see also* *McCuen v. State*, 338 Ark. 631, 999 S.W.2d 682 (1999); *Baker v. Norris*, 369 Ark. 405, n.2, 255 S.W.3d 466 n.2 (2007) (The Arkansas Rules of Civil Procedure have never been applied to postconviction proceedings nor do they apply to a postconviction habeas proceeding.).

Grant has cited no authority and provided no convincing argument to allow the application of Rule 60(b) or 60(c) as a means to set aside an adverse ruling with respect to a habeas petition, and we do not consider arguments that are not well taken. *Gay v. State*, 2016 Ark. 433, 506 S.W.3d 851. Grant failed to perfect an appeal from the denial of his underlying habeas petition, and for the reasons stated above, Grant is not entitled to postconviction relief through the application of Rule 60 of the Arkansas Rules of Civil Procedure. Finally, Grant has likewise provided no authority or convincing argument for his proposition that he is entitled to a default judgment pursuant to Rule 55 of the Arkansas Rules of Civil Procedure and, as stated above, we do not consider arguments that are not well taken. *Id.*

Appeal dismissed; motions moot.

HART, J., dissents.

**JOSEPHINE LINKER HART, Justice, dissenting.** Because I do not agree that “appeal dismissed; motions moot” is the proper disposition of this case, I must dissent from the

majority opinion. Grant did not file a notice of appeal from the trial court's denial of his habeas petition. Instead, Grant filed a notice of appeal from the trial court's order denying his Rule 60(c) motion, lodged the record with this court, and filed a document titled "Motion - Arkansas - Rule 60" that he plainly intended to serve as his argument on appeal, all in timely fashion. I see no reason why this court should not simply address Grant's arguments on the merits, and then "affirm" or "reverse" accordingly. Furthermore, I do not understand why this court is declaring "moot" Grant's motion for default judgment; said motion was filed in the circuit court, not the appellate court, and we lack jurisdiction to address it.

I dissent.