

Cite as 2010 Ark. 390

# SUPREME COURT OF ARKANSAS

No. CR 10-773

JON MILLS  
a/k/a John Mills  
Appellant

v.

STATE OF ARKANSAS  
Appellee

Opinion Delivered October 21, 2010

PRO SE MOTION TO FILE  
BELATED BRIEF [CIRCUIT COURT  
OF SALINE COUNTY, CR 94-378,  
HON. GARY M. ARNOLD, JUDGE]

APPEAL DISMISSED; MOTION  
MOOT.

## PER CURIAM

In 1995, appellant Jon Mills, who is also known as John Mills, was found guilty by a jury of rape and sexual abuse and sentenced to an aggregate term of life imprisonment. We affirmed. *Mills v. State*, 321 Ark. 621, 906 S.W.2d 674 (1995).

More than fifteen years after he was convicted of the offenses, appellant filed in the trial court a pro se “Motion of Corruption.” In the motion he contended that the evidence at his trial was insufficient to sustain the verdict, that he was denied his rights under the United States Constitution and several rules of criminal procedure, that he was denied effective assistance of counsel at trial, and that the trial judge was not vested with authority to hear his case. The trial court denied the motion, and appellant has lodged an appeal here. He now seeks by pro se motion leave to file a belated brief-in-chief.

We need not address the merits of the motion because it is clear from the record that appellant could not prevail on appeal if the appeal were permitted to go forward. Accordingly,

Cite as 2010 Ark. 390

the appeal is dismissed, and the motion is moot. The motion filed in the trial court sought postconviction relief, and it is well settled that 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. *Goldsmith v. State*, 2010 Ark. 158 (per curiam); *Watkins v. State*, 2010 Ark. 156, 362 S.W.3d 910 (per curiam); *Meraz v. State*, 2010 Ark. 121 (per curiam); *Smith v. State*, 367 Ark. 611, 242 S.W.3d 253 (2006) (per curiam).

This court does not reverse a denial of postconviction relief unless the trial court's findings are clearly erroneous. *Watkins*, 2010 Ark. 156; *Jamett v. State*, 2010 Ark. 28, 358 S.W.3d 874 (per curiam) (citing *Britt v. State*, 2009 Ark. 569, 349 S.W.3d 290 (per curiam)). A finding is clearly erroneous when, although there is evidence to support it, the appellate court, after reviewing the entire evidence, is left with the definite and firm conviction that a mistake has been committed. *Polivka v. State*, 2010 Ark. 152, 362 S.W.3d 918; *Jamett*, 2010 Ark. 28; *Anderson v. State*, 2009 Ark. 493 (per curiam); *Small v. State*, 371 Ark. 244, 264 S.W.3d 512 (2007) (per curiam).

There is no pleading in the prevailing rules of procedure entitled, "Motion of Corruption." Regardless of the label placed on it by the petitioner, however, a petition is considered an application for relief under Arkansas Rule of Criminal Procedure 37.1 (2010) if the grounds asserted are cognizable under that rule. *Jackson v. State*, 2010 Ark. 157 (per curiam); *McLeod v. State*, 2010 Ark. 95 (per curiam); *State v. Wilmoth*, 369 Ark. 346, 255 S.W.3d 419 (2007); *Bailey v. State*, 312 Ark. 180, 848 S.W.2d 391 (1993) (per curiam). Here,

Cite as 2010 Ark. 390

appellant raised some grounds cognizable under the rule, such as ineffective assistance of counsel, as well as other claims, such as the claim of insufficient evidence and constitutional challenges that should have been raised at trial and on direct appeal. *See, e.g., McCraney v. State*, 2010 Ark. 96, 360 S.W.3d 144 (per curiam) (addressing ineffective assistance of counsel claims under Rule 37.1); *Rodriguez v. State*, 2010 Ark. 78 (per curiam) (noting that claims challenging the sufficiency of the evidence are not cognizable in Rule 37.1 petitions and must be addressed on direct appeal); *Mezquita v. State*, 354 Ark. 433, 125 S.W.3d 161 (2003) (treating pretrial identification procedures as questions of due process); *Hendrix v. State*, 291 Ark. 134, 722 S.W.2d 596 (1987) (holding that illegal sentencing is a proper subject for a Rule 37.1 petition); *see also Bell v. State*, 2010 Ark. 65, 360 S.W.3d 98 (per curiam) (explaining that assertions of due-process violations are allegations of trial error that could have been raised at trial or on appeal and may not be raised in Rule 37.1 proceedings).

With respect to those allegations cognizable under Rule 37, Rule 37.2(c) provides that all grounds for postconviction relief must be raised in a petition under the rule filed within sixty days of the date that the appellate court's mandate affirming the judgment was issued. This court's mandate in the instant case was issued in 1995, and appellant was obligated to proceed under the rule within sixty days of that date. Time limitations imposed in Rule 37.2(c) are jurisdictional in nature, and, if they are not met, a trial court lacks jurisdiction to grant postconviction relief. *Jackson*, 2010 Ark. 157; *Tillman v. State*, 2010 Ark. 103 (per curiam); *McLeod*, 2010 Ark. 95; *Lauderdale v. State*, 2009 Ark. 624 (per curiam); *Worthem v.*

Cite as 2010 Ark. 390

*State*, 347 Ark. 809, 66 S.W.3d 665 (2002) (per curiam).

Inasmuch as appellant did not establish that the trial court had jurisdiction to consider the motion, there is no good cause to permit the appeal from the order to continue.

Appeal dismissed; motion moot.