

SUPREME COURT OF ARKANSAS

No. CR 10-584

RONALD J. HAMILTON, JR.
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered November 18, 2010

PRO SE MOTION FOR EXTENSION
OF TIME TO FILE BRIEF [SALINE
COUNTY CIRCUIT COURT, CR
2003-543, HON. GARY M. ARNOLD,
JUDGE]

APPEAL DISMISSED; MOTION
MOOT.

PER CURIAM

A Saline County Circuit Court judgment entered on May 24, 2005, reflects that appellant Ronald J. Hamilton, Jr., entered a negotiated plea of guilty to capital murder, rape, kidnapping, theft of property, and arson and received an aggregate term of imprisonment of three consecutive life sentences plus 480 months. On September 9, 2009, appellant filed in the trial court a petition for scientific testing under Act 1780 of 2001 Acts of Arkansas, as amended by Act 2250 of 2005 and codified as Arkansas Code Annotated sections 16-112-201 to -208 (Repl. 2006), that was denied. Appellant lodged an appeal of the order in this court, and he has now filed a motion requesting an extension of time in which to file his brief. We dismiss the appeal, and the motion is therefore moot.

An appeal from an order that denied a petition for postconviction relief, including an appeal from an order denying a petition for writ of habeas corpus based upon new scientific evidence, will not be permitted to go forward where it is clear that the appellant could not

prevail. *Strong v. State*, 2010 Ark. 181, 372 S.W.3d 758 (per curiam). In this case, appellant cannot prevail because the petition he filed for Act 1780 relief was not timely, and section 16-112-202(10) provides that a motion for relief under Act 1780 must be made in a timely fashion. See *Aaron v. State*, 2010 Ark. 249 (per curiam). Section 16-112-202(10) provides for a rebuttable presumption against timeliness for any motion not made within thirty-six months of the date of conviction and lists five grounds by which the presumption may be rebutted. *Id.* Appellant's petition was filed more than four years after his conviction and did not provide any ground upon which the presumption might be rebutted.

A petitioner may establish that his petition is timely through a showing that incompetence substantially contributed to the delay, that the evidence to be tested is newly discovered, or that a new method of technology that is substantially more probative than prior testing is available. *Scott v. State*, 372 Ark. 587, 279 S.W.3d 66 (2008) (per curiam). A petitioner may rebut the presumption based upon a claim that denial would result in manifest injustice, but may not do so solely through an assertion of his innocence. *Id.* A petitioner can also rebut the presumption through other good cause. *Id.*

Appellant's petition alleged that certain DNA testing was not previously requested as a result of ineffective assistance of counsel, that there is now an expanded database for DNA samples, and that the victim should be exhumed to provide samples. Claims of ineffective assistance of counsel are not cognizable in proceedings under Act 1780. *Aaron*, 2010 Ark. 249. Appellant did not allege his own incompetence or make a showing sufficient to rebut

the presumption that his petition was not timely. DNA testing was available, and appellant appears to indicate that some DNA testing was performed. Appellant did not provide facts to support his claim that an expanded source of potential DNA samples for comparison to samples from the victim would somehow be more probative than what was then available. Appellant's admission of guilt lends strong support for the proposition that the testing available at the time may have well been conclusively probative without need for comparison to samples other than appellant's and the victim's.

Because the petition under Act 1780 did not rebut the statutory presumption, it was not timely, and the trial court did not err in denying relief under the act. It is clear that appellant cannot prevail on appeal, and we therefore dismiss the appeal.

Appeal dismissed; motion moot.