

SUPREME COURT OF ARKANSAS

No. CR 10-1008

DOUGLAS MUSGROVE
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered November 18, 2010

PRO SE MOTIONS FOR
EXTENSION OF TIME TO FILE
BRIEF AND FOR USE OF
TRANSCRIPT [ASHLEY COUNTY
CIRCUIT COURT, CR 2005-98, CR
2005-220, CR 2006-58, HON. DON E.
GLOVER, JUDGE]

APPEAL DISMISSED; MOTIONS
MOOT.

PER CURIAM

In 2006, appellant Douglas Musgrove entered a plea of guilty to multiple criminal offenses and was sentenced to an aggregate term of 120 months' imprisonment. More than three years later in 2009, appellant filed in the trial court a pro se motion "for nunc pro tunc amendment to judgment." In the motion he asked that the sentences imposed be ordered served concurrently with a sentence imposed in a Louisiana court. The court denied the motion, and appellant has lodged an appeal in this court.

Appellant now asks by pro se motions for an extension of time to file his brief-in-chief and use of the record lodged in this appeal to prepare the brief. We need not address the motions as it is clear from the record that appellant could not prevail if the appeal were

permitted to go forward. Accordingly, the appeal is dismissed, and the motions are 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. *Carter v. State*, 2010 Ark. 369 (per curiam); *Winnett v. State*, 2010 Ark. 346 (per curiam); *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).

Regardless of the label placed on the motion filed in the trial court, it was a petition for postconviction relief, and, as such, it was governed by the provisions of our postconviction rule, Arkansas Rule of Criminal Procedure 37.1 (2010). See *Carter*, 2010 Ark. 369; see also *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). Considered as a petition under Rule 37.1, the motion was not timely filed.

Under Arkansas Rule of Criminal Procedure 37.1(c), where, as here, a petitioner entered a plea of guilty, a petition under the rule must be filed within ninety days of the date that the judgment of conviction was entered. The time limitations in Rule 37.1(c) are jurisdictional in nature, and, if those requirements are not met, the circuit court lacks jurisdiction to consider an untimely petition. See *Smith v. State*, 2010 Ark. 122 (per curiam); *Lauderdale v. State*, 2009 Ark. 624 (per curiam); *Womack v. State*, 368 Ark. 341, 245 S.W.3d

Cite as 2010 Ark. 458

154 (2006) (per curiam). Appellant's request for postconviction relief was not timely filed, and the court did not have jurisdiction to grant the relief sought.

Appeal dismissed; motions moot.