

SUPREME COURT OF ARKANSAS

No. CR 10-981

WALTER J. SIMS, JR.
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered March 31, 2011

PRO SE MOTION FOR COPIES AT
PUBLIC EXPENSE [APPEAL FROM
JEFFERSON COUNTY CIRCUIT
COURT, CR 2005-037, HON. JODI
RAINES DENNIS, JUDGE]

APPEAL DISMISSED; MOTION
MOOT

PER CURIAM

Appellant Walter J. Sims, Jr., was convicted by a Jefferson County jury of first-degree murder and was sentenced to 600 months' incarceration in the Arkansas Department of Correction. The Arkansas Court of Appeals affirmed. *Sims v. State*, No. CACR 08-616 (Ark. App. Feb. 18, 2009). The mandate affirming appellant's conviction was issued on March 10, 2009. Appellant subsequently filed a timely petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2010), but that petition was not verified as required by Rule 37.1(c) and it was properly dismissed without prejudice by the trial court.

On June 5, 2009, appellant filed a properly verified Rule 37.1 petition.¹ Following a

¹ A second mandate was issued on May 14, 2009. However, appellant has not argued the second mandate changed the deadline under Arkansas Rule of Criminal Procedure 37.2 (2010) for filing a petition for postconviction relief. Appellant is not prejudiced by the clerical error, inasmuch as appellant filed his initial petition for postconviction relief prior to the second mandate, and neither of appellant's Rule 37.1 petitions references the later mandate. Therefore, we treat the first mandate as controlling for purposes of timeliness, and we consider

hearing on the petition, the trial court determined that appellant's second brief had not been filed within the time limits set out in our rules of criminal procedure, and the petition was dismissed. Appellant appealed from that dismissal.

He has tendered two copies of his brief, and now before us is appellant's motion for copies at public expense. Because we find that appellant could not prevail on appeal, we dismiss the appeal, and the motion is accordingly moot. An appeal from an order that denied a petition for a postconviction remedy will not be permitted to go forward where it is clear that the appellant could not prevail. *See Lauderdale v. State*, 2009 Ark. 624 (per curiam) (citing *Johnson v. State*, 362 Ark. 453, 208 S.W.3d 783 (2005) (per curiam)); *see also Crosby v. Pope*, 2009 Ark. 554.

If a direct appeal is taken from a conviction and the conviction is affirmed on appeal, a Rule 37.1 petition must be filed within sixty days of the date the mandate was issued by the appellate court. Ark. R. Crim. P. 37.2(c). Time limitations imposed in Rule 37.2(c) are jurisdictional in nature, and if they are not met, a trial court lacks jurisdiction to consider a Rule 37.1 petition. *Trice v. State*, 2011 Ark. 74 (per curiam) (citing *Mills v. State*, 2010 Ark. 390 (per curiam)); *Gardner v. State*, 2010 Ark. 344 (per curiam); *Harris v. State*, 2010 Ark. 314 (per curiam); *Crawford v. State*, 2010 Ark. 313 (per curiam).

Appellant filed his properly verified petition eighty-seven days after the mandate issued. As such, the trial court was without jurisdiction to consider it, and dismissal for lack of

the second mandate to be a simple clerical error having no legal effect.

Cite as 2011 Ark. 135

jurisdiction was proper.² Where, as here, the circuit court lacks jurisdiction, the appellate court also lacks jurisdiction. *See Clark v. State*, 362 Ark. 545, 210 S.W.3d 59 (2005) (citing *Priest v. Polk*, 322 Ark. 673, 912 S.W.2d 902 (1995)). We therefore dismiss the appeal for lack of jurisdiction, and appellant's motion for copies at public expense is moot.

Appeal dismissed; motion moot.

² Appellant's failure to timely file a verified petition is not saved by his prior timely filing of an unverified petition. *See Shaw v. State*, 363 Ark. 156, 211 S.W.3d 506 (2005) (holding that a trial court lacked jurisdiction to consider petitions for postconviction relief where the first and second petitions to the circuit court lacked verification and third petition was not filed within the time limits of subsection (c)).