

SUPREME COURT OF ARKANSAS

No. 10-1023

THANE THOMAS NEWTON
Appellant

v.

ARKANSAS DEPARTMENT OF
CORRECTION SEX OFFENDER
ASSESSMENT COMMITTEE
Appellee

Opinion Delivered March 31, 2011

PRO SE MOTION FOR LEAVE TO
SUPPLEMENT ADDENDUM AND
PETITION FOR WRIT OF
CERTIORARI TO COMPLETE
RECORD [PULASKI COUNTY
CIRCUIT COURT, CV 2010-1847,
HON. MARY McGOWAN, JUDGE]

MOTION AND PETITION DENIED;
APPEAL DISMISSED.

PER CURIAM

Appellant Thane Thomas Newton is an inmate incarcerated in the Arkansas Department of Correction (“ADC”). On April 12, 2010, appellant filed a petition for judicial review and declaratory relief in Pulaski County Circuit Court that sought judicial review of his final assessment by the ADC’s Sex Offender Assessment Committee (“SOAC”). The circuit court dismissed the petition as untimely filed, and appellant has lodged an appeal in this court. The parties have filed their briefs in the matter, and appellant has also filed a motion and petition that seek to supplement the record and the addendum with certain documents that are not contained in the record. We deny the motion and petition, and, consequently, dismiss the appeal.

Under the statute providing for judicial review, a petitioner is required to file his petition for review in the circuit court within thirty days of his receipt of the findings. Ark. Code Ann. § 12-12-922(b)(7)(A)(ii) (Repl. 2009); *see also* *Munson v. Ark. Dep't of Corr. Sex Offender Screening & Risk Assessment Comm.*, 2010 Ark. 177 (per curiam). In his petition for judicial review, appellant acknowledged that he received the final decision from SOAC on January 11, 2010. This date is not contested by appellant, but, in his briefs to this court and the pending motion and petition, he would contest the date of filing of his petition.

The documents that appellant seeks to include in the record on appeal and in the addendum to his brief were not filed with the circuit clerk, but were instead mailed to the judge in the case. Those documents include a response to the appellee's motion to dismiss that asserts that appellant tendered a timely petition with the circuit clerk that was erroneously rejected for filing and provides some documentation in support of that allegation. Appellant does not allege that the documents were in fact marked and transmitted by the judge to the circuit clerk for filing under Arkansas Rule of Civil Procedure 5(d) (2010). Rule 5(d) permits a judge to allow pleadings to be filed through his or her office, but it does not require that the judge do so. Appellant does not provide a file-marked copy of the response to the motion to dismiss, docket sheet, or other demonstration that the judge permitted litigants to file pleadings in that manner.

Delivering a pleading to the circuit judge is not the equivalent of filing the pleading with the circuit clerk. *See Meraz v. State*, 2010 Ark. 121 (per curiam). Filing the pleading *with*

the circuit clerk is critical to the trial court's jurisdiction to consider the merits of the pleading. *Id.* For the circuit court to consider the merits of appellant's allegations that he had tendered a timely petition, filing the pleading with the circuit clerk was essential. Appellant has therefore failed to show that a writ of certiorari to include the documents in the record, or that permission to include the documents in his brief, is appropriate. We must accordingly deny relief on the motion and petition before this court.

Because appellant did not comply with the rules of procedure in presenting the issue of the tendered petition for judicial review to the circuit court, the court had only the file-marked petition contained in the record to consider, as do we. This court has long and consistently held that it cannot, in the exercise of its appellate jurisdiction, receive testimony or consider anything outside of the record below. *Smith v. Brownlee*, 2010 Ark. 266 (per curiam). The petition in the record was filed ninety-one days after appellant received his final assessment. The petition was clearly outside the prescribed time period, and the circuit court was without jurisdiction to consider it. Under the circumstances, where it is clear that appellant cannot prevail, we will not permit the appeal to go forward. *See Munson v. Ark. Dep't of Corr. Sex Offender Screening & Risk Assessment*, 369 Ark. 290, 253 S.W.3d 901 (2007). We therefore dismiss the appeal.

Motion and petition denied; appeal dismissed.