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SUPREME COURT OF ARKANSAS

No. CR-10-1018

ELLIS TRICE

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered February 17, 2011

APPELLEE'S MOTION TO DISMISS
APPEAL AND FOR EXTENSION OF
TIME TO FILE BRIEF; APPELLANT'S
MOTIONS FOR RETURN OF SEIZED
PROPERTY

[CRAWFORD COUNTY CIRCUIT
COURT, NO. CR 2008-312]

HON. MICHAEL MEDLOCK, JUDGE

APPELLEE'S MOTION TO DISMISS
APPEAL GRANTED; APPELLEE'S
MOTION FOR EXTENSION OF TIME
TO FILE BRIEF MOOT; APPELLANT'S
MOTIONS FOR RETURN OF SEIZED
PROPERTY DISMISSED.

PER CURIAM

In 2009, judgment was entered in the Crawford County Circuit Court reflecting that a jury had found appellant Ellis Trice guilty of computer child pornography, and he was sentenced to 180 months' imprisonment. The Arkansas Court of Appeals affirmed. *Trice v. State*, 2010 Ark. App. 6. The appellate court mandate was issued on January 26, 2010.

On May 25, 2010, appellant filed in the trial court a pro se petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2010). The petition was denied, and appellant has lodged an appeal in this court.

Now before us is the appellee's motion to dismiss the appeal on the ground that the Rule 37.1 petition was not timely filed. We find merit in the appellee's motion and dismiss the appeal. Appellee filed a motion for extension of time to file its brief in the event that the motion to dismiss was denied. As the motion to dismiss is granted, that motion is moot.

It is clear from the face of the record that the Rule 37.1 petition was not timely filed, rendering the appeal subject to dismissal. See *Coleman v. State*, 2010 Ark. 490 (per curiam). This court has consistently held that a postconviction appeal will not be permitted to go forward when it is clear that the appellant could not prevail. *Id.*; *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); *Robertson v. State*, 2010 Ark. 300, 367 S.W.3d 538 (per curiam); *Carter v. State*, 2010 Ark. 231, 364 S.W.3d 46 (per curiam); *Gray v. State*, 2010 Ark. 216 (per curiam); see *Tillman v. State*, 2010 Ark. 103 (per curiam); *Pierce v. State*, 2009 Ark. 606 (per curiam); *Grissom v. State*, 2009 Ark. 557 (per curiam); see also *Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (per curiam); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (per curiam). Arkansas Rule of Criminal Procedure 37.2(c) (2010) provides that a petition under the rule must be filed within sixty days of the date the mandate of the appellate court was issued. Here, appellant filed his petition 119 days after the mandate affirming the judgment of conviction was issued. 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. *Mills*, 2010 Ark. 390; *Gardner*, 2010 Ark. 344; *Harris*, 2010 Ark. 314; *Crawford*, 2010 Ark. 313; *Gray*, 2010 Ark. 216; see *Tillman*, 2010 Ark. 103 (citing *Lauderdale v. State*, 2009 Ark. 624 (per

curiam)); *see also Maxwell v. State*, 298 Ark. 329, 767 S.W.2d 303 (1989).

After the appellee filed its motion to dismiss the appeal, appellant filed two motions seeking return of property that he alleges was improperly seized by the State incident to his prosecution. As the issue of seized property is not germane to the untimely filing of appellant's Rule 37.1 petition, those motions are dismissed.

Appellee's motion to dismiss appeal granted; appellee's motion for extension of time to file brief moot; appellant's motions for return of seized property dismissed.