

SUPREME COURT OF ARKANSAS

No. CR09-207

RONALD D. MCJAMES

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered February 18, 2010

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. CR2002-1805]

HON. WILLARD PROCTOR, JR.,
JUDGE

DISMISSED.

JIM GUNTER, Associate Justice

Appellant appeals the denial of his petition for a writ of error coram nobis, arguing that the circuit court erred in finding that his petition was untimely. We find that appellant's notice of appeal was untimely and therefore dismiss.

Appellant pled guilty to capital murder and was sentenced to life imprisonment without parole. The judgment was entered on August 19, 2003. In 2005, appellant attempted to pursue postconviction relief pursuant to Ark. R. Crim. P. 37.1, but his petition was denied by the circuit court and ruled untimely by this court. *McJames v. State*, CR05-939 (Ark. Oct. 27, 2005) (unpublished). In 2006, appellant filed a petition to correct an illegal sentence pursuant to Ark. Code Ann. § 16-90-111, which was denied by the circuit court, and this court again ruled that appellant's petition was untimely and dismissed the appeal. *McJames v. State*, CR07-372 (Ark. May 31, 2007) (unpublished). In 2008, appellant filed a motion for



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rule on clerk after our clerk refused to file his petition for writ of certiorari. See *McJames v. State*, CR07-1267 (Ark. Jan. 24, 2008) (unpublished). Appellant’s proffered writ of certiorari attacked the judgment against him on a number of bases, including ineffective assistance of counsel and denial of due process. *Id.* This court held that a writ of certiorari was not the proper means for review of a judgment of conviction and denied appellant’s motion for rule on clerk. *Id.*

Most recently, on May 21, 2008, appellant filed a petition for writ of error coram nobis in the Pulaski County Circuit Court.¹ In this petition, appellant alleged that the State had illegally amended the felony information in his case from a charge of first-degree murder to capital murder and that he had been coerced by the State, the circuit court, and defense counsel into pleading guilty. He asserted claims of prosecutorial misconduct, ineffective assistance of counsel, and a violation of due process. On September 22, 2008, appellant filed a “motion to amend summary to writ of error coram nobis,” which reiterated some of his allegations but also included new allegations, especially regarding his ineffective assistance of counsel claim. On November 4, 2008, appellant’s motion to amend was denied, and on November 5, 2008, the circuit court denied the petition on the grounds that appellant had

¹ In those instances, as here, where the judgment of conviction was entered on a plea of guilty or nolo contendere, or the judgment of conviction was not appealed, the petition for writ of error coram nobis is filed directly in the trial court. If the judgment of conviction was affirmed on appeal, the petitioner must first proceed in this court and gain leave to file a petition in the trial court by means of a petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis. *Dansby v. State*, 343 Ark. 635, 37 S.W.3d 599 (2001) (per curiam).



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failed to act with due diligence in filing his petition and the petition was therefore untimely. On November 21, 2008, and again on November 25, 2008, appellant filed motions for reconsideration pursuant to Ark. R. Crim. P. 33.3. Appellant then filed a notice of appeal from the November 5, 2008 order on December 30, 2008.

Though not briefed by the parties, we must first address the preliminary issue of whether appellant's notice of appeal was timely filed. Whether an appellant has filed an effective notice of appeal is always an issue before the appellate court, and absent an effective notice of appeal, this court lacks jurisdiction to consider the appeal and must dismiss it. *Bilyeu v. State*, 342 Ark. 271, 27 S.W.3d 400 (2000).

In this case, appellant asserted that his motions for reconsideration were filed pursuant to Ark. R. Crim. P. 33.3, which governs posttrial motions. Under Ark. R. App. P.–Crim. 2(a)(3), the notice of appeal must be filed within thirty days from the date a posttrial motion under Rule 33.3 has been deemed denied. In this case, if Rule 33.3 applies, appellant's November 21 motion was deemed denied on December 21, 2008, and the November 25 motion was deemed denied on December 25, 2008, thus making his notice of appeal, filed on December 30, 2008, timely. However, the question for this court is whether a motion for reconsideration filed after a denial of a writ of error coram nobis is considered a posttrial motion that will operate to extend the time for filing a timely notice of appeal.

As authority for filing his motions for reconsideration, appellant cited *Collins v. State*, 324 Ark. 322, 920 S.W.2d 846 (1996), which stated that “[t]he terms of Rule 36.22 [predecessor to current Rule 33.3] are broad and include a motion for reconsideration of the



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denial of post-conviction relief.” *Id.* at 325, 920 S.W.2d at 847. In that case, we held that the rule concerning posttrial motions did apply to a motion for reconsideration filed after a denial of a Rule 37 petition; therefore, the appellant’s notice of appeal, filed five days after his motion for reconsideration was denied, was timely. However, the procedural rules have changed since *Collins*, and Rule 33.3’s deemed-denied provision is now held to be inapplicable to Rule 37 proceedings. *Young v. State*, 373 Ark. 264 283, S.W.3d 188 (2008). Rule 37.2(d) specifies that the decision of the circuit court in a Rule 37 proceeding is final, and no petition for rehearing shall be considered. Consequently, any posttrial motion made after a Rule 37 decision is ineffective and does not extend the time for filing the notice of appeal. *See Morgan v. State*, 360 Ark. 264, 200 S.W.3d 890 (2005) (finding that a notice of appeal filed on July 28, 2004, was not timely with respect to a June 18, 2004 order, despite the motion for modification of the order that was filed on June 29, 2004).

While this situation has not previously been addressed in the context of an error coram nobis proceeding, we now hold that Rule 33.3’s deemed-denied provision is likewise inapplicable to this postconviction proceeding, which renders appellant’s notice of appeal untimely and not effective. Accordingly, we lack jurisdiction to address the merits of appellant’s argument and dismiss the appeal.

Appellant has also filed motions to expand the record, for a copy of the record to prepare his brief, for extension of time to file his brief, for permission to add exhibits to his brief, and for a rule on clerk, in which he requests that his late-tendered reply brief be filed. Because the briefs have been filed, appellant’s motions for a copy of the record and an



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extension of time are moot, and our disposition of this case renders the remaining motions moot as well.

Dismissed.

Ronald D. McJames, pro se appellant.

Dustin McDaniel, Att'y Gen., by: *Vada Berger*, Ass't Att'y Gen., for appellee.