

SUPREME COURT OF ARKANSAS

No. CR 09-1346

JOHN STEVEN CROFT
PETITIONER

V.

STATE OF ARKANSAS
RESPONDENT

Opinion Delivered February 18, 2010

PRO SE MOTION FOR RULE ON
CLERK [CIRCUIT COURT OF
PULASKI COUNTY, CR 2006-1230]
HON. CHRISTOPHER CHARLES
PIAZZA, JUDGE

MOTION TREATED AS MOTION
FOR BELATED APPEAL AND
DENIED.

PER CURIAM

In 2007, petitioner John Steven Croft was found guilty by a jury of two counts of sexual assault in the second degree. An aggregate sentence of 360 months' imprisonment was imposed. The Arkansas Court of Appeals affirmed. *Croft v. State*, CACR 07-1135 (Ark. App. May 21, 2008) (unpublished). The mandate was issued on June 10, 2008.

On July 22, 2008, petitioner timely filed in the trial court a pro se petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2008), which did not comply with Rule 37.1(c) in that it was not verified. It was also longer than the ten pages allowed for such petitions under Rule 37.1(b). On October 13, 2008, the court denied the petition on the ground that it was not timely filed based on the court's statement that the petition was filed September 22, 2008, and thus was not filed within sixty days of the date that the appellate-court mandate was issued. Rule 37.2(c) requires that petitions be filed within



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that sixty-day period. Petitioner filed a motion for reconsideration, and the court on November 24, 2008, granted it, concluding that the petition was indeed timely.¹

On March 11, 2009, petitioner filed a motion to amend the Rule 37.1 petition and also filed an amended petition, which was verified. The allegations in the amended petition appear to reiterate and overlap those raised in the initial petition. While there is no order in the record granting the motion to amend the petition, the court held a hearing at which it considered claims raised in the amended petition. As the court considered the allegations in the amended petition, it may be assumed that the court permitted the petition to be amended. On June 16, 2009, the trial court entered an order denying the relief sought that appears to cover both petitions.

Petitioner did not file a timely notice of appeal from the order. Now before us is his motion for rule on clerk, seeking to proceed with the appeal. The motion is treated as a motion for belated appeal inasmuch as a timely notice of appeal is not contained in the record. *See Douglas v. State*, 2009 Ark. 468 (per curiam); *see also Holland v. State*, 358 Ark. 366, 190 S.W.3d 904 (2004) (per curiam) (citing *Johnson v. State*, 342 Ark. 709, 30 S.W.3d 715 (2000) (per curiam)).

As it is clear that petitioner could not prevail on appeal, the motion is denied. An

¹The order granting the motion for reconsideration indicates that there was considerable confusion as to exactly when the Rule 37.1 petition was filed, but in the light most favorable to the petitioner, the court elected to consider the petition as timely filed and to consider it on the merits. There was no reference in the order to the lack of verification of the petition or the fact that it exceeded the length for such petitions.



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appeal of the denial of postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. See *Pierce v. State*, 2009 Ark. 606 (per curiam); see also *Buckhanna v. State*, 2009 Ark. 490 (per curiam).

In determining whether petitioner could prevail if the appeal were permitted to go forward, the threshold question is whether the filing of the first timely, but unverified, petition vested jurisdiction in the court to consider the allegations contained in both the first petition and the second petition, which was properly verified but not filed within the required sixty-day period allowed to file a petition under the rule.

Again, only the unverified first petition was timely filed. As it was not verified, it was subject to dismissal. See *Bunch v. State*, 370 Ark. 113, 257 S.W.3d 533 (2007) (per curiam). The case of *Shaw v. State*, 363 Ark. 156, 211 S.W.3d 506 (2005) (per curiam), was similar procedurally. In *Shaw*, the petitioner first filed a timely, but unverified, Rule 37.1 petition. He then filed an amended petition that was also unverified, and later filed a second amended petition, which was verified. The trial court denied postconviction relief, and Shaw appealed to this court. The State filed a motion to dismiss the appeal on the ground that the original petition was not verified, and we granted the motion.

As petitioner here did not file a timely verified petition, there was no basis for the court to assume jurisdiction of the matter. As a result, it did not have jurisdiction to consider the amended petition that was not timely filed. 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



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Rule 37.1 petition. *Maxwell v. State*, 298 Ark. 329, 767 S.W.2d 303 (1989); *see also Lauderdale v. State*, 2009 Ark. 624 (per curiam); *Buckhanna*, 2009 Ark. 490. Because a verified petition was not timely filed, petitioner could not prevail on appeal, and we accordingly deny the motion to proceed with a belated appeal.

Motion treated as motion for belated appeal and denied.

No briefs filed.