

Cite as 2010 Ark. 216

SUPREME COURT OF ARKANSAS

No. CR 10-254

RUFUS GRAY
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered May 6, 2010

PRO SE MOTIONS FOR RULE ON
CLERK AND TO ENTER EXHIBITS
AS EVIDENCE [CIRCUIT COURT
OF CLARK COUNTY, CR 2004-217,
HON. ROBERT E. McCALLUM,
JUDGE]

MOTION FOR RULE ON CLERK
TREATED AS MOTION FOR
BELATED APPEAL AND DENIED;
MOTION TO ENTER EXHIBITS AS
EVIDENCE MOOT.

PER CURIAM

On February 27, 2008, judgment was entered reflecting that petitioner Rufus Gray had been found guilty by a jury of attempted rape and sentenced to 560 months' imprisonment. A fine of \$7,500 was also imposed. No appeal was taken, and petitioner sought leave to proceed with a belated appeal of the judgment pursuant to Rule 2(e) of the Rules of Appellate Procedure—Criminal (2010). This court denied the motion. *Gray v. State*, CR 08-994 (Ark. Oct. 30, 2008) (unpublished per curiam).

On October 27, 2009, petitioner filed in the trial court a pro se motion for leave to proceed with a belated petition pursuant to Arkansas Rule of Criminal Procedure 37.1 (2009),

a Rule 37.1 petition, and a motion to enter exhibits as evidence. The pleadings were denied on the day they were filed. Petitioner did not file a timely notice of appeal from the order. Now before us is petitioner's motion for rule on clerk in which he seeks leave to proceed with an appeal of the order. As a notice of appeal was not timely filed, we treat the motion as a motion for belated appeal under Rule 2(e). *See 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)).

We need not consider petitioner's grounds for a belated appeal of the order because it is clear from the record that he could not prevail on appeal if the motion were granted. An appeal from an order that denied a petition for postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *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).

Pursuant to Arkansas Rule of Criminal Procedure 37.2(c) (2009), if an appeal was not taken from a judgment of conviction, a petition under the rule must be filed in the circuit court within ninety days of the date the judgment was entered. There is no provision in the rule for a belated petition. Petitioner did not timely file a Rule 37.1 petition in the trial court, and he was not entitled to proceed with a belated petition. Time limitations imposed in Rule 37.2(c) are jurisdictional in nature, and the circuit court was correct to deny the motion to file a belated petition. *See Tillman*, 2010 Ark. 103 (citing *Lauderdale v. State*, 2009

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Ark. 624 (per curiam)); *see also Maxwell v. State*, 298 Ark. 329, 767 S.W.2d 303 (1989).

The instant motion to proceed with an appeal is denied. The motion to enter exhibits as evidence is moot.

Motion for rule on clerk treated as motion for belated appeal and denied; motion to enter exhibits as evidence moot.