

Cite as 2010 Ark. 313

SUPREME COURT OF ARKANSAS

No. CR 09-272

BRAD ERIC CRAWFORD
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered June 24, 2010

PRO SE MOTION TO FILE
BELATED BRIEF [CIRCUIT COURT
OF MISSISSIPPI COUNTY,
CHICKASAWBA DISTRICT, CR 99-
399, CR 2005-233, HON. RALPH E.
WILSON, JR., JUDGE]

APPEAL DISMISSED; MOTION
MOOT.

PER CURIAM

In 2000, appellant Brad Eric Crawford entered a plea of guilty to six counts of delivery of a controlled substance and was sentenced to serve an aggregate term of 126 months' imprisonment. Additionally, a 120-month suspended sentence was imposed on each count. He was subsequently paroled.

In 2006, appellant was found guilty by a jury of murder in the first-degree and sentenced to 708 months' imprisonment. In the same proceeding, the trial court revoke the suspended sentences from the 2000 conviction. Appellant appealed both the judgment reflecting the conviction for murder and the revocation order. The Arkansas Court of Appeals affirmed. *Crawford v. State*, CACR 07-446 (Ark. App. Dec. 5, 2007) (unpublished). The mandate following affirmance of the judgment and order was issued December 27, 2007.

Approximately one year later, appellant filed in the trial court a pro se motion seeking leave to proceed with a belated petition pursuant to Arkansas Rule of Criminal Procedure 37.1 (2010). The petition was denied, and appellant lodged an appeal from the order in this court. He now seeks leave by pro se motion to file a belated brief.

We need not consider petitioner's grounds for the motion because it is clear from the record that appellant could not prevail on appeal if the motion were granted and the appeal proceeded. 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. *Tillman v. State*, 2010 Ark. 103 (per curiam); *Pierce v. State*, 2009 Ark. 606 (per curiam); *Arissom 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 when an appeal is taken, "a petition claiming relief under this rule must be filed in the circuit court within sixty (60) days of the date the mandate was issued by the appellate court." Ark. R. Crim. P. 37.2(c); *Carter v. State*, 2010 Ark. 231, 364 S.W.3d 46 (per curiam); *see also Tillman*, 2010 Ark. 103. Time limitations in Rule 37.2(c) are jurisdictional in nature, and, where they are not met, a trial court lacks jurisdiction to grant postconviction relief. *DeLoach v. State*, 2010 Ark. 79 (per curiam) (citing *Maxwell v. State*, 298 Ark. 329, 767 S.W.2d 303 (1989)); *see also Croft v. State*, 2010 Ark. 83 (per curiam). There is no provision in the rule for a belated petition. *See Gray v. State*, 2010 Ark. 216 (per curiam). If a trial court lacks jurisdiction as the result of the petitioner's failure to comply with Rule 37.2(c), this court likewise lacks jurisdiction to reach

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the merits of an appeal pertaining to the untimely petition. *Carter*, 2010 Ark. 231, 364 S.W.3d 46; *see also Lawhon v. State*, 328 Ark. 335, 942 S.W.2d 864 (1997) (per curiam).

Petitioner here did not timely file a Rule 37.1 petition in the trial court. Accordingly, the appeal is dismissed. The motion to file a belated brief is moot.

Appeal dismissed; motion moot.

CORBIN, J., not participating.