

SUPREME COURT OF ARKANSAS

No. CR 09-206

CONNEL BUCKHANNA
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered October 8, 2009

PRO SE MOTION TO FILE BELATED
BRIEF [CIRCUIT COURT OF PULASKI
COUNTY, CR 2006-1178, HON. JOHN
W. LANGSTON, JUDGE]

APPEAL DISMISSED; MOTION
MOOT.

PER CURIAM

In 2006, appellant Conneal Buckhanna was convicted by a jury of possession of a controlled substance and possession of drug paraphernalia. He was sentenced as a habitual offender to an aggregate term of 360 months' imprisonment. The Arkansas Court of Appeals affirmed. *Buckhanna v. State*, CACR 06-1488 (Ark. App. Aug. 29, 2007).

In 2008, appellant filed in the trial court a pro se petition for writ of error coram nobis or to vacate the judgment entered against him. Therein, he sought coram nobis relief, asked that the judgment be vacated pursuant to Arkansas Rule of Civil Procedure 60, and alleged errors at trial. Appellant additionally claimed that trial counsel was ineffective. He prayed for a hearing and that counsel be appointed to represent him. The trial court denied the petition, and appellant has lodged a pro se appeal here from the order.

Now before us is appellant's pro se motion to file a belated brief. He contends herein that, while appellant was in solitary confinement, another inmate stole his legal paperwork in order to extort money from him. Without the papers, he maintains, he was unable to timely file his brief-in-chief.

We need not consider the substance of the motion to file a belated brief. As appellant could not be successful on appeal, the appeal is dismissed and the motion is moot. 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 Johnson v. State*, 362 Ark. 453, 208 S.W.3d 783 (2005) (per curiam).

After a judgment has been affirmed on appeal, a petition filed in this court for leave to proceed in the trial court is necessary because the circuit court can entertain a petition for writ of error coram nobis only after we grant permission. *Dansby v. State*, 343 Ark. 635, 37 S.W.3d 599 (2001) (per curiam). Appellant's judgment from which he sought error coram nobis relief was affirmed on appeal. Appellant was thus required to obtain this court's permission to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis, which he previously sought to obtain.¹ *Id.* In the instant matter, appellant could not demonstrate that he was entitled to seek a writ of error coram nobis in the trial court.

Appellant also cited Rule 60 and trial errors as grounds for relief. Rule 60 does not provide an avenue for postconviction relief. *State v. Rowe*, 374 Ark. 19, 285 S.W.3d 614 (2008). Moreover, trial errors are properly raised at trial and on direct appeal, rather than in petitions for postconviction relief. *Taylor v. State*, 297 Ark. 627, 764 S.W.2d 447 (1989) (per curiam).

As to ineffectiveness allegations, such claims are properly brought pursuant to a petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1. Ark. R. Crim. P. 37.1(a); *Jackson v. State*, 352 Ark. 359, 105 S.W.3d 352 (2003) (citing *Strickland v. Washington*, 466 U.S. 668 (1984)).

Ineffective assistance claims are outside the purview of a coram nobis proceeding, and a petition for writ

¹In *Buckhanna v. State*, CACR 06-1488 (Ark. Jan. 22, 2009) (per curiam), we denied a pro se petition filed in this court by appellant to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis. The petition pertained to the same 2006 judgment of conviction that is at issue here.

Cite as 2009 Ark. 490

of error coram nobis is not a substitute for proceeding under Rule 37.1. *McArty v. State*, 335 Ark. 445, 983 S.W.2d 418 (1998) (per curiam). The trial court nevertheless considered appellant's ineffective assistance arguments under Rule 37.1, and found no grounds to grant the relief requested.

Review of the applicable dates in this matter establish that the trial court had no jurisdiction over the Rule 37.1 claims as the petition was untimely filed. Pursuant to Arkansas Rule of Criminal Procedure 37.2(c), if an appeal was taken, a petition under Rule 37.1 must be filed in the trial court within sixty days of the date the mandate was issued by the appellate court. Here, the mandate was issued by the court of appeals on September 18, 2007. Appellant's petition that included Rule 37.1 relief was filed on November 14, 2008, more than one year after the mandate 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. *Maxwell v. State*, 298 Ark. 329, 767 S.W.2d 303 (1989). Because the trial court lacked jurisdiction over any Rule 37.1 assertions, if the appeal were allowed to go forward, appellant could not be successful establishing that the trial court erred.

Appeal dismissed; motion moot.