

ARKANSAS SUPREME COURT

No. CR 08-1473

PANTHENIE GREEN
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered April 2, 2009

PRO SE MOTIONS FOR RECORD AT
PUBLIC EXPENSE AND FOR
EXTENSION OF TIME TO FILE
APPELLANT'S BRIEF [CIRCUIT
COURT OF CRAIGHEAD COUNTY,
WESTERN DISTRICT, CR 2006-471,
HON. JOHN N. FOGLEMAN, JUDGE]

APPEAL DISMISSED; MOTIONS
MOOT.

PER CURIAM

A judgment entered on March 10, 2008, reflects that appellant Panthenie Green entered a negotiated plea of guilty or nolo contendere to rape and was sentenced to 168 months' incarceration. On July 9, 2008, appellant filed in the trial court a petition to vacate under Arkansas Rule of Civil Procedure 60. The court denied the petition as untimely and appellant lodged an appeal of the order in this court. Appellant has filed motions requesting the record be provided to him and an extension of time to file his brief. Because we dismiss the appeal, the motions are moot.

An appeal of the denial of postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *Booth v. State*, 353 Ark. 119, 110 S.W.3d 759 (2003) (per curiam). This court has consistently held that Rule 60 does not provide an avenue for postconviction relief. *State v. Rowe*, 374 Ark. 19, 285 S.W.3d 614 (2008); *State v. Wilmoth*, 369 Ark. 346, 255 S.W.3d 419 (2007); *McArty v. State*, 364 Ark. 517, 221 S.W.3d 332 (2006) (per curiam). We have acknowledged that the theory behind Rule 60 has been applied in those criminal

cases where we recognized a court's power to correct a judgment *nunc pro tunc* to make it speak the truth. *Dawson v. State*, 343 Ark. 683, 38 S.W.3d 319 (2001). Appellant's petition did not seek to correct the judgment; it sought to challenge the judgment through a collateral attack, as may be appropriate through a timely petition for postconviction relief under Arkansas Rule of Criminal Procedure 37.1.

The trial court could not treat the petition to vacate as a petition for postconviction relief under Rule 37.1 because, as such, it would not have been timely. Where a conviction was obtained on a plea of guilty, Arkansas Rule of Criminal Procedure 37.2(c) requires that the petition for postconviction relief must be filed within ninety days of the entry of the judgment. In this case, the petition to vacate was filed 121 days after the judgment was entered. The time limitations imposed in Rule 37.2(c) are jurisdictional in nature, and the circuit court may not grant relief on an untimely petition. *Womack v. State*, 368 Ark. 341, 245 S.W.3d 154 (2006) (per curiam). The trial court had no jurisdiction to consider the petition under either Rule 60 or Rule 37.1. Because appellant cannot prevail on appeal, the appeal is dismissed and the motions are moot.

Appeal dismissed; motions moot.