

ARKANSAS SUPREME COURT

No. CR 08-1266

ADAM SCOTT PEPPERS
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered April 9, 2009

APPELLEE STATE'S MOTION TO DISMISS APPEAL; APPELLANT'S PRO SE MOTION TO STAY APPEAL [CIRCUIT COURT OF CRAIGHEAD COUNTY, WESTERN DISTRICT, CR 98-818, HON. JOHN N. FOGLEMAN, JUDGE]

APPELLEE'S MOTION TO DISMISS APPEAL GRANTED; APPELLANT'S MOTION TO STAY APPEAL MOOT.

PER CURIAM

In 1999, appellant Adam Scott Peppers entered a plea of guilty to murder in the first degree and was sentenced to 420 months' imprisonment. No appeal was taken. In 2008, he filed in the trial court a pro se petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1. The petition was dismissed on the ground that it was not timely filed. Appellant has lodged a pro se appeal here from the order.

Now before us are a motion filed by the appellee State asking that the appeal be dismissed and appellant's pro se motion to stay the appeal. As appellant could not be successful on appeal, appellee State's motion to dismiss the appeal is granted, and appellant's motion to stay the appeal 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. *Johnson v. State*, 362

Ark. 453, 208 S.W.3d 783 (2005) (per curiam).

It is clear from the record lodged in this appeal that appellant's Rule 37.1 petition was not timely filed. Arkansas Rule of Criminal Procedure 37.2(c) provides that a petition under the rule must be filed within ninety days of the date the judgment was entered if the petitioner pleaded guilty. Here, petitioner filed the petition approximately nine years after the judgment in his case was entered. The time limitations imposed in Rule 37.2(c) are jurisdictional in nature, and a circuit court cannot grant relief on an untimely petition. *Maxwell v. State*, 298 Ark. 329, 767 S.W.2d 303 (1989).

Appellant's motion to stay the appeal is based on his desire to have the circuit court rule on a petition for writ of error coram nobis that he filed in that court before this court acts on the instant appeal. As the appeal is dismissed on the appellee's motion, appellant's motion is moot.¹

Appellee's motion to dismiss appeal granted; appellant's motion to stay appeal moot.

¹In the motion to stay the appeal, appellant asks for a delay in this court's decision in the instant appeal so that the circuit court can make a decision on the petition for writ of error coram nobis. In the motion to stay, he also states that he filed a notice of appeal in circuit court "on his error coram nobis on November 4, 2008." This statement suggests that the circuit court denied the coram nobis relief sought by appellant.