

Cite as 2009 Ark. 226 (unpublished)

# ARKANSAS SUPREME COURT

No. CR 08-362

STEPHEN BATES  
Appellant

v.

STATE OF ARKANSAS  
Appellee

**Opinion Delivered April 23, 2009**

APPEAL FROM THE CIRCUIT  
COURT OF POPE COUNTY, CR  
2004-253, HON. JAMES D.  
KENNEDY, JUDGE

APPEAL DISMISSED.

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## PER CURIAM

In 2004, a jury found appellant Stephen Bates, also known as Steve Bates, guilty of two counts of possession of a controlled substance and possession of drug paraphernalia and sentenced him to an aggregate term of 240 months' imprisonment. The Arkansas Court of Appeals affirmed the judgment. *Bates v. State*, CACR 05-607 (Ark. App. Feb. 8, 2006). The mandate issued on February 28, 2006.

On May 1, 2006, appellant filed in the trial court a pro se petition for postconviction relief under Arkansas Rule of Criminal Procedure 37.1.<sup>1</sup> Appellant moved for, and was granted, leave to amend the petition, and then filed an amended pro se petition on July 15, 2007. Appellant again moved to amend the petition on July 16, 2007, but the trial court denied the petition on July 23, 2007. On August 24, 2007, the trial court entered an order

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<sup>1</sup> The petition was timely under Arkansas Rule of Criminal Procedure 37.2(c). The sixtieth day after the mandate was April 29, 2006, a Saturday. Appellant's petition was filed the following Monday, May 1, 2006.



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purporting to set aside the order denying postconviction relief under Arkansas Rule of Civil Procedure 60, and later appointed counsel to represent appellant. On December 20, 2007, following a hearing on the matter, the trial court entered an order that dismissed the pending petition because it found that the original petition was not properly verified. Still represented by counsel, appellant brings this appeal of the December 20, 2007, order dismissing the Rule 37.1 petition.

We must dismiss the appeal because it is clear that the order appealed was not a validly entered order. The trial court denied the postconviction relief petition on July 23, 2007. The order that set aside the order denying relief did so under a rule that has no application in this situation. 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). Here, the order sought to set aside the denial of relief and did not reference the correction of a clerical error. Because the August 24, 2007, order was invalid and the petition had already been denied, the trial court had no jurisdiction to enter the order on December 20, 2007.

Appeal dismissed.