

Cite as 2009 Ark. 285 (unpublished)

ARKANSAS SUPREME COURT

No. CR 09-101

MARION ALFRED LOVELL II
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered May 14, 2009

PRO SE MOTIONS FOR
APPOINTMENT OF COUNSEL AND
FOR BRIEF TIME [CIRCUIT
COURT OF SALINE COUNTY, CR
2004-79, CR 2004-732, HON.
GRISHAM A. PHILLIPS, JUDGE]

APPEAL DISMISSED; MOTIONS
MOOT.

PER CURIAM

In 2004, appellant Marion Alfred Lovell II entered a plea of guilty to ten charges in two criminal matters and was sentenced to an aggregate term of 120 months' imprisonment.¹ No appeal was taken.

In 2008, appellant filed in the trial court a petition to correct an illegal sentence, brought pursuant to Arkansas Code Annotated § 16-90-111 (1987). The trial court dismissed the petition as being untimely filed, and appellant, proceeding pro se, has lodged an appeal here from the order.

¹In Saline County Circuit Court case number CR 2004-79, appellant was charged with manufacturing methamphetamine, possession of a controlled substance (methamphetamine), aggravated assault, fleeing, first-degree criminal mischief, reckless driving and driving on a suspended driver's license. In case number CR 2004-732, appellant was charged with manufacturing methamphetamine, simultaneous possession of drugs and a firearm, possession of a firearm by certain persons and possession of a controlled substance (marijuana), second offense. The State dismissed the marijuana-related charge upon entry of an order of *nolle prosequi*.



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Now before us are appellant's pro se motions for appointment of counsel and for an extension of time to file his brief-in-chief. As appellant could not be successful on appeal, the appeal is dismissed and the motions are 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. *Womack v. State*, 368 Ark. 341, 245 S.W.3d 154 (2006) (per curiam)

Section 16-90-111 has been superceded to the extent that it conflicts with the time limitations for postconviction relief under Arkansas Rule of Criminal Procedure Rule 37.1. *State v. Wilmoth*, 369 Ark. 346, 255 S.W.3d 419 (2007). As appellant entered guilty pleas to the criminal charges filed against him, he was required to seek relief under this statute within ninety days of the date that the judgment was entered. Ark. R. Crim. P. 37.2(c); *State v. Wilmoth, supra*. Appellant's petition was filed almost four years after that date and therefore not timely as a request for relief pursuant to section 16-90-111.²

Appeal dismissed; motions moot.

²We note that appellant stated in the petition that he reserved the right to seek future postconviction relief pursuant to Rule 37.1. Nevertheless, the time limitations found in Rule 37.2(c) would likewise preclude a timely request for relief pursuant to Rule 37.1.