

SUPREME COURT OF ARKANSAS

Moody v. State

2015 Ark. 337 (2015) · No. CR-15-518 · Decided September 24, 2015

SUMMARY

The Supreme Court of Arkansas dismissed Alton S. Moody’s appeal concerning the denial of his petition for postconviction relief. The court held that the Rule 37.1 petition was untimely because it was filed more than sixty days after the appellate mandate issued, depriving the circuit court of jurisdiction to grant relief. The court also addressed the timeliness of Moody’s notice of appeal and his argument regarding receipt by the circuit clerk.

CASE DETAILS

|                       |                                                                                                                                                                                                                                               |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Arkansas                                                                                                                                                                                                                     |
| WRITING FOR THE COURT | Per Curiam                                                                                                                                                                                                                                    |
| JURISDICTION          | Arkansas                                                                                                                                                                                                                                      |
| DECIDED               | September 24, 2015                                                                                                                                                                                                                            |
| DOCKET                | CR-15-518                                                                                                                                                                                                                                     |
| DISPOSITION           | dismissed                                                                                                                                                                                                                                     |
| PROCEDURAL POSTURE    | Moody sought review of the dismissal of his Arkansas Rule of Criminal Procedure 37.1 postconviction petition and moved for a rule on the clerk after the clerk declined to lodge the record because the notice of appeal appeared untimely.   |
| STANDARD OF REVIEW    | The court reviewed the record to determine whether the circuit court had jurisdiction to grant postconviction relief and whether the appeal could proceed. Because the record did not establish jurisdiction, the court dismissed the appeal. |
| PRECEDENTIAL VALUE    | Published Arkansas Supreme Court opinion; precedential                                                                                                                                                                                        |
| PARTIES               | Alton S. Moody v. State of Arkansas                                                                                                                                                                                                           |

TOPICS

- state post-conviction relief
- post-conviction relief
- appellate procedure
- appellate jurisdiction
- criminal procedure

## PRACTICE AREAS

criminal procedure

post-conviction relief

appellate procedure

## QUESTIONS PRESENTED

1. Whether Moody's notice of appeal from the denial of postconviction relief was timely or should be permitted as a belated appeal based on alleged delivery to the circuit clerk on the filing deadline.
2. Whether the circuit court had jurisdiction to grant Rule 37.1 postconviction relief when the petition was filed more than sixty days after the appellate mandate issued.

## HOLDINGS

1. A belated appeal from an order denying postconviction relief is not allowed absent a showing of good cause for failing to comply with the filing procedure. The court did not resolve whether Moody's notice was timely tendered because the appeal could not succeed on the merits of the jurisdictional postconviction issue.
2. When a conviction has been appealed, a Rule 37.1 petition must be filed within sixty days after the appellate mandate issues. The time limitation is jurisdictional; a petition filed outside that period does not confer jurisdiction on the trial court to grant postconviction relief.
3. An appellant bears the burden of bringing up a record sufficient for the appellate court to grant relief; when the record does not establish jurisdiction, the court must assume that jurisdiction was absent.

## KEY QUOTATIONS

*"The time limitations in Rule 37.2 are jurisdictional in nature, and, if the petition was not filed within that period, a trial court lacks jurisdiction to grant postconviction relief."* (at 2)

*"Without a record that establishes jurisdiction in the trial court to reach the merits of the petition, we must assume that the court did not have jurisdiction."* (at 3)

## FACTUAL BACKGROUND

Moody was convicted of drug charges following a bench trial, and the Arkansas Court of Appeals affirmed the conviction. The appellate court issued its mandate on November 25, 2014. Moody filed his Rule 37.1 postconviction petition on January 27, 2015, one day after the January 26 deadline calculated under Rule 37.2(c).

## PROCEDURAL HISTORY

Moody was convicted of drug charges after a bench trial, and the Arkansas Court of Appeals affirmed. The circuit court dismissed his Rule 37.1 petition. The Arkansas Supreme Court concluded that the petition was untimely under Rule 37.2(c), leaving the circuit court without jurisdiction to grant postconviction relief, and dismissed the appeal.

## DISPOSITION

dismissed

#### CASES CITED

- *Moody v. State*, 2014 Ark. App. 618, 446 S.W.3d 652
- *Bean v. State*, 2014 Ark. 440 (per curiam)
- *State v. Boyette*, 362 Ark. 27, 207 S.W.3d 488 (2005)
- *In re Ark. Sup. Ct. Comm. on Criminal Practice—Ark. R. App. P.—Crim. 2 & Ark. R. Crim. P. 37.2*, 2015 Ark. 296 (per curiam)
- *Barrow v. State*, 2012 Ark. 197
- *State v. Tejeda-Acosta*, 2013 Ark. 217, 427 S.W.3d 673
- *State v. Harrison*, 2012 Ark. 198, 404 S.W.3d 838
- *Meraz v. State*, 2010 Ark. 121 (per curiam)
- *Tilson v. State*, 2015 Ark. 36 (per curiam)
- *Vance v. State*, 2011 Ark. 243, 383 S.W.3d 325