

Cite as 2011 Ark. 239

SUPREME COURT OF ARKANSAS

No. CR 11-352

THURMAN RUSSELL
Petitioner

v.

HON. GORDON WEBB, CIRCUIT
JUDGE
Respondent**Opinion Delivered** May 26, 2011PRO SE PETITION FOR WRIT OF
MANDAMUS AND MOTION TO
ENTER DOCUMENTS AS EXHIBITS
[BAXTER COUNTY CIRCUIT
COURT, CR 2005-58]AMENDED RESPONSE
REQUESTED; MOTION DENIED.**PER CURIAM**

In 2006, petitioner Thurman Russell was found guilty by a jury of two counts of solicitation to commit capital murder and sentenced to an aggregate term of 720 months' imprisonment. The Arkansas Court of Appeals affirmed. *Russell v. State*, CACR 06-1425 (Ark. App. Dec. 10, 2008) (unpublished).

On February 19, 2009, petitioner filed in the trial court a timely verified pro se petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2010). On March 18, 2009, he filed a motion to amend the Rule 37.1 petition, and, on June 12, 2009, petitioner filed an amended petition, which was not verified. On September 11, 2009, the court entered an order denying and dismissing the "amended petition for post-conviction relief." There was no specific mention in the order of the original Rule 37.1 petition filed February 19, 2009. Petitioner appealed to this court from the September 11, 2009 order. The

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appellee State filed a motion to dismiss the appeal, seeking dismissal of the appeal solely on the failure of petitioner to verify the amended petition, noting that the proper verification of the original petition did not cure the failure to verify the amended petition in which a new allegation was raised. The State's motion appeared to assume that only the amended petition was ruled on by the court in the September 11, 2009 order. On June 24, 2010, this court granted the motion to dismiss the appeal by Per Curiam Order.

On April 6, 2011, petitioner filed the pro se petition for writ of mandamus that is now before us. Petitioner contends in the petition that the Honorable Gordon Webb, Circuit Judge, has not acted on the February 19, 2009 Rule 37.1 petition. In its response to the mandamus petition, the State on behalf of Judge Webb argues that the mandamus petition is moot because the order of September 11, 2009, disposed of the original Rule 37.1 petition. In a tendered response to the State's response, petitioner asserts that only the amended petition was ruled on by the court in the September 11, 2009 order.

Because the order of September 11, 2009, refers to the "amended petition" only, it is not clear whether the court's order encompassed the original Rule 37.1 petition and the amendment or merely the amended petition filed June 12, 2009. For this reason, we ask that the respondent, Judge Webb, submit an amended response to the mandamus petition specifying whether the September 11, 2009 order disposed of both the original Rule 37.1 petition, which was a properly verified petition, and the amended petition that was subject to dismissal for lack of verification.

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Petitioner has filed a motion seeking to add certain documents as exhibits to the mandamus petition. The documents are letters that appear to express the opinion of the author as to whether the original petition was acted on by the court. As such documents are not dispositive of the issue of whether the original petition remains pending, the motion is denied.

Amended response requested; motion denied.