

## SUPREME COURT OF ARKANSAS

No. CR 11-1022

KENNETH TUCKER, JR.

APPELLANT

v.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered December 15, 2011

PRO SE MOTION AND AMENDED MOTION FOR COPY OF RECORD, APPOINTMENT OF COUNSEL, AND TO STAY BRIEFING AND PETITION FOR WRIT OF CERTIORARI [ASHLEY COUNTY CIRCUIT COURT, CR 2009-36, HON. SAM POPE, JUDGE]

APPEAL DISMISSED; MOTION, AMENDED MOTION, AND PETITION MOOT.

## PER CURIAM

In 2009, an Ashley County jury found appellant Kenneth Tucker, Jr. guilty of two counts of delivery of a controlled substance for which he was sentenced to an aggregate term of 360 months' imprisonment. The Arkansas Court of Appeals affirmed. *Tucker v. State*, 2010 Ark. App. 489.

Appellant then timely filed in the trial court a pro se petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2011) that was denied. He has lodged an appeal of the order in this court. Now before us is appellant's petition for writ of certiorari to complete the record and his motion and amended motion for a copy of the record, appointment of counsel, and a stay of the briefing schedule. Because the petition for Rule 37.1 relief was not properly verified, we dismiss the appeal. The motion, amended motion, and petition for writ of certiorari are moot.

An appeal from an order that denied a petition for a postconviction remedy will not be

permitted to go forward where it is clear that the appellant could not prevail. *Fernandez v. State*, 2011 Ark. 418, \_\_\_ S.W.3d \_\_\_ (per curiam); *Hill v. State*, 2011 Ark. 419 (per curiam); *Croft v. State*, 2010 Ark. 83 (per curiam); *Crain v. State*, 2009 Ark. 512 (per curiam). Rule 37.1(c) requires a petition to be accompanied by an appropriate affidavit. Ark. R. Crim. P. 37.1(c); see *Gilcrease v. State*, 2011 Ark. 108 (per curiam); see also *Smith v. State*, 2010 Ark. 122 (per curiam). Here, the petition did not include the affidavit required by Rule 37.1(c).

The verification requirement for a postconviction-relief petition is of substantive importance to prevent perjury. *Gilcrease*, 2011 Ark. 108; *Smith*, 2010 Ark. 122 (citing *Shaw v. State*, 363 Ark. 156, 211 S.W.3d 506 (2005) (per curiam)). Where a petition is not verified and where there is not explicit leave from the trial court for petitioner to file an unverified petition, a trial court shall dismiss the petition without consideration of the issues contained in the petition. *Gilcrease*, 2011 Ark. 108; *Sparacio v. State*, 2010 Ark. 335 (per curiam). The record does not reflect that there was explicit leave from the trial court to file an unverified petition in the instant matter.

The trial court shall not accept for filing, and must dismiss, a petition that is not verified as required by Rule 37.1(c). Ark. R. Crim. P. 37.1(d); *Gilcrease*, 2011 Ark. 108; *Smith*, 2010 Ark. 122; see also *Waters v. State*, 2009 Ark. 530 (per curiam). Under Rule 37.1(d), any appellate court is also required to dismiss an appeal where the petition failed to comply with Rule 37.1(c). *Gilcrease*, 2011 Ark. 108; *Riley v. State*, 2010 Ark. 347 (per curiam); see also *Cogshell v. State*, 2010 Ark. 378 (per curiam).

Appeal dismissed; motion, amended motion, and petition for writ of certiorari moot.