

ARKANSAS COURT OF APPEALS

DIVISION I
No. CR-18-717

ANDREW LEE JACKSON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered: February 20, 2019

APPEAL FROM THE GARLAND
COUNTY CIRCUIT COURT
[NO. 26CR-15-226]

HONORABLE MARCIA R.
HEARNSBERGER, JUDGE

APPEAL DISMISSED

RAYMOND R. ABRAMSON, Judge

A Garland County Circuit Court jury found appellant Andrew Lee Jackson guilty of two counts of rape for having sexual intercourse with two teenaged girls while serving as their youth pastor. He was sentenced to forty years' imprisonment on each count, which the circuit court ordered to be served consecutively. We affirmed those convictions on direct appeal, *Jackson v. State*, 2018 Ark. App. 222, 547 S.W.3d 753, and the mandate issued on April 24, 2018. Subsequently, Jackson's attorney filed in the circuit court a petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37. The circuit court denied the petition on July 20, 2018, for failure to comply with Rule 37.1(c) of the Arkansas Rules of Criminal Procedure. Jackson now brings this appeal.

On June 20, 2018, Jackson, represented by counsel, filed in the circuit court his Rule 37 petition for postconviction relief. The petition was verified by Jackson's counsel, but not by Jackson, and included a request that he be granted leave to amend the petition.

On June 26, 2018, the State moved to dismiss Jackson's petition on the ground that he had not filed a timely verified petition. Jackson responded to the motion, asserting that the verification executed by his attorney was adequate. He also pled, in the alternative, that if the circuit court concluded that his petition was deficient, then he should be allowed leave to amend it to cure the deficiencies. The circuit court concluded that the lack of personal verification of the petition by Jackson was not a technical deficiency, and that because Jackson moved to amend his petition more than sixty days after the mandate had issued, the petition could not be amended. In its July 20, 2018 order, the circuit court specifically found: "The lack of verification from the petitioner, Andrew Jackson, leaves this court in a position where it can not even consider the petition." We agree.

Jackson's petition was not in compliance with the Rule in that it was not verified in accordance with Rule 37.1(c). Rule 37.1(c) requires that the petition be accompanied by the petitioner's affidavit that is sworn before a notary or other officer authorized to administer oaths; in substantially the form noted in that provision; and attesting that the facts stated in the petition are true, correct, and complete.

The form as it appears in the Rule is as follows:

AFFIDAVIT

The petitioner states under oath that (he) (she) has read the foregoing petition for postconviction relief and that the facts stated in the petition are true, correct, and complete to the best of petitioner's knowledge and belief.

Petitioner's signature

Subscribed and sworn to before me the undersigned officer this ____ day of _____,
20____.

Notary or other officer

Ark. R. Crim. P. 37.1(c).

Rule 37.1(d) requires that the circuit clerk reject an unverified petition and that the circuit court or any appellate court must dismiss a petition that fails to comply with Rule 37.1(c). See *Williamson v. State*, 2012 Ark. 170 (per curiam); see also *Stephenson v. State*, 2011 Ark. 506 (per curiam).

In 2006, Rule 37.1 was amended to more clearly require that a Rule 37.1 petition be verified. *Randle v. State*, 2016 Ark. 228, 493 S.W.3d 309 (per curiam). Counsel for a petitioner may not sign and verify the petition; the petitioner must sign the petition, and his or her signature must be verified in accordance with the rule. *Wooten v. State*, 2010 Ark.

467, 370 S.W.3d 475. Jackson's petition was signed only by his attorney. It did not bear Jackson's signature and the verification required by the rule.

Our supreme court has held that the verification requirement for a postconviction-relief petition is of substantive importance to prevent perjury. See *Bradley v. State*, 2015 Ark. 144, 459 S.W.3d 302; *Martin v. State*, 2012 Ark. 312 (per curiam); *Williamson*, 2012 Ark. 170; *Tucker v. State*, 2011 Ark. 543 (per curiam). In short, Jackson failed to abide by the requirements of Rule 37.1(c), and pursuant to Rule 37.1(d) "the circuit court or any appellate court shall dismiss any petition that fails to comply with subsection (c) of this rule." See *Bradley*, 2015 Ark. 144, at 4, 459 S.W.3d at 305. For that reason, we dismiss Jackson's appeal.

Appeal dismissed.

HIXSON, J., agrees.

VIRDEN, J., concurs.

BART F. VIRDEN, Judge, concurring. I agree with the majority that Rule 37.1 requires verification and that the verification requirement is of substantive importance to prevent perjury. I also agree that based on the ironclad precedent and pronouncements of the supreme court, this case must be affirmed. This concurrence is to call attention to another instance of how we, and in this case the appellant, are hamstrung by the catch-22 that can result from those precedents and pronouncements. As to the matters contained in the defendant's petition for postconviction relief, there could be no danger of perjury. It is purely a review of the record from the trial below. However, it is troubling that Jackson

was denied the opportunity to comply with the verification requirement despite counsel's timely attempts and Jackson's repeated requests to do so on his own behalf. Jackson's counsel confirms that he was not allowed access to his client. In an affidavit attached to Jackson's motion to allow communication with his attorney, counsel explains that he called the East Arkansas Regional Unit where Jackson was housed more than twelve times but that he was not permitted to speak with Jackson. Counsel explained that when he was finally allowed to meet with his client, he attempted to bring documentation relating to the Rule 37 petition for Jackson to review and sign; however, counsel was told that he was not allowed to bring any written materials into the facility, and he was forced to leave the petition in the car. No doubt the rules of the correctional facility have sound, rational reasoning behind them, but because Jackson's attorney was not allowed to verify the petition that he prepared, and Jackson was not allowed the material from his trial, Jackson was cut off from the Rule 37 review process, and he has no recourse. The result, while procedurally congruous with precedent and technically correct, is fundamentally unfair in this application.

Ben Motal, for appellant.

Leslie Rutledge, Att'y Gen., by: *Vada Berger*, Ass't Att'y Gen., for appellee.