

ARKANSAS SUPREME COURT

No. CR 09-205

MILTON DONELL WOFFORD
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered May 28, 2009

PRO SE MOTION FOR COPY OF
RECORD AND EXTENSION OF TIME
TO FILE APPELLANT'S BRIEF
[CIRCUIT COURT OF PULASKI
COUNTY, CR 2006-3516, HON.
BARRY A. SIMS, JUDGE]

APPEAL DISMISSED; MOTION
MOOT.

PER CURIAM

A jury found appellant Milton Donell Wofford guilty of attempted rape and sentenced him to 360 months' imprisonment and a \$5,000 fine. The Arkansas Court of Appeals affirmed. *Wofford v. State*, CACR 07-692 (Ark. App. Feb. 6, 2008). Appellant timely filed in the trial court a petition for postconviction relief under Arkansas Rule of Criminal Procedure 37.1 that was denied. Appellant lodged an appeal of the order in this court and has now filed a motion in which he requests a copy of the record and an extension of time in which to file his brief.

This court has consistently held that an appeal of the denial of postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *Bunch v. State*, 370 Ark. 113, 257 S.W.3d 533 (2007) (per curiam). Because it is clear here that appellant cannot prevail, we dismiss the appeal. The motion is therefore moot.

The trial court's order provided a single ruling. In his petition, appellant alleged that trial counsel was ineffective because he failed to adequately cross examine certain witnesses as to a

number of asserted inconsistencies.¹ The court found that the allegations were founded on matters of trial strategy and not grounds for postconviction relief.

Where the trial court has determined a decision by counsel was a matter of trial tactics or strategy, and that decision is supported by reasonable professional judgment, then a decision not to call a witness or challenge a statement may not be a proper basis for relief under Rule 37.1. *See Weatherford v. State*, 363 Ark. 579, 215 S.W.3d 642 (2005) (per curiam). The inconsistent statements about which appellant alleged counsel failed to question the witnesses were arguably much more damaging than beneficial to appellant's case. The inconsistencies were relatively minor in comparison to the facts contained in the statements that were consistent. The two statements appellant identified tended more to support the applicable witness testimony than discredit it and the decision not to challenge the witnesses was supported by reasonable professional judgment.

This court does not reverse a denial of postconviction relief unless the trial court's findings are clearly erroneous. *Davis v. State*, 366 Ark. 401, 235 S.W.3d 902 (2006). A finding is clearly erroneous when, although there is evidence to support it, the appellate court, after reviewing the entire evidence, is left with the definite and firm conviction that a mistake has been committed. *Small v. State*, 371 Ark. 244, 264 S.W.3d 512 (2007) (per curiam). Here, the trial court's findings were not clearly erroneous and appellant cannot prevail on appeal.

Appeal dismissed; motion moot.

¹ Appellant did not clearly delineate the issues raised in his petition, mostly providing a rambling account of his version of events that did, however, include complaints of counsel's allowing the victim to lie in court and failing to bring up inconsistent prior statements by witnesses. He also raised a claim of prosecutorial misconduct, but the trial court provided no ruling as to that issue. An appellant has an obligation to obtain a ruling on any issue to be preserved for appeal. *See Howard v. State*, 367 Ark. 18, 238 S.W.3d 24 (2006); *Beshears v. State*, 340 Ark. 70, 8 S.W.3d 32 (2000).