

Cite as 2010 Ark. 141

SUPREME COURT OF ARKANSAS

No. CR 09-363

ANDROUS HALL
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered March 18, 2010

PRO SE MOTION FOR
APPOINTMENT OF COUNSEL
[CIRCUIT COURT OF PHILLIPS
COUNTY, CR 96-271, HON. RICHARD
L. PROCTOR, JUDGE]MOTION MOOT; APPEAL
DISMISSED.**PER CURIAM**

Appellant Androus Hall, an inmate incarcerated in the Arkansas Department of Correction, filed in the court in which he was convicted a motion for order of subpoena. The motion sought to obtain certain documents appellant alleged were necessary for a petition for writ of habeas corpus intended to challenge his criminal conviction. Later, appellant filed another request, this one seeking certain scientific test results. The trial court denied both motions by an order entered on October 7, 2008. Appellant then filed a motion to set aside that order on November 12, 2008. He filed a petition for writ of mandamus in the trial court on March 12, 2009, that sought to obtain a ruling on the motion to set aside the October 7 order and to have the trial court grant his request for reconsideration. The court entered an order denying the motion to set aside and the petition for writ of mandamus on March 23, 2009. Appellant lodged an appeal as to the latter order in this court and now brings this motion for appointment of counsel.

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Since filing the motion for counsel, the briefs have been filed. The motion is therefore moot. We note, moreover, that appellant also failed to address the merits of his appeal in his motion. An appellant must make a substantial showing that he is entitled to relief in a postconviction appeal and that he cannot proceed without counsel before we will appoint counsel. See *Viveros v. State*, 372 Ark. 463, 277 S.W.3d 223 (2008) (per curiam).

We dismiss the appeal without addressing the merits of the issues raised by the briefs because it is clear that appellant cannot prevail. 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. *Pineda v. Norris*, 2009 Ark. 471 (per curiam) (citing *Lukach v. State*, 369 Ark. 475, 255 S.W.3d 832 (2007) (per curiam)). The trial court clearly did not err in denying relief as to appellant's petition for writ of mandamus.¹

The State challenges the trial court's jurisdiction to hear the petition, citing *Raines v. State*, 335 Ark. 376, 980 S.W.2d 269 (1998) (per curiam). We need not address, however, whether the trial court may have had concurrent jurisdiction with this court to hear a petition for mandamus such as appellant filed. To the extent that appellant may have sought to obtain a particular result, his remedy was to appeal the order with which he disagreed, not mandamus. The writ will not lie to control or review matters of discretion. *Ark. Democrat-Gazette v. Zimmerman*, 341 Ark. 771, 20 S.W.3d 301 (2000). By providing a ruling as to the motion to set aside the previous order, the trial court provided appellant with the relief that he sought in the petition for the writ, and any issues in that regard are moot.

¹ Our clerk declined to lodge an appeal as to the denial of the motion to set aside order.

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Appellant clearly cannot prevail on appeal, as he received the only relief to which he may have been entitled. Accordingly, we dismiss the appeal.

Motion moot; appeal dismissed.