Cite as 2010 Ark. 343

SUPREME COURT OF ARKANSAS

No. CR 10-457

	Opinion Delivered September 23, 2010
MELVIN HAWTHORNE Appellant v. STATE OF ARKANSAS Appellee	PRO SE MOTION FOR EXTENSION OF TIME TO FILE BRIEF [CIRCUIT COURT OF GARLAND COUNTY, CR 2007-115, HON. JOHN WRIGHT, JUDGE] APPEAL DISMISSED; MOTION MOOT.

PER CURIAM

In 2008, appellant Melvin Hawthorne was found guilty by a jury of possession of a controlled substance with intent to deliver and simultaneous possession of drugs and firearms. He was sentenced as a habitual offender to 306 months' imprisonment. The Arkansas Court of Appeals affirmed. *Hawthorne v. State*, 2009 Ark. App. 635.

Appellant subsequently filed in the trial court a pro se petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2010). The petition was denied. Appellant lodged an appeal here and now seeks by pro se motion an extension of time to file the appellant's brief.

We need not address the merits of the motion because it is clear from the record that appellant could not prevail on appeal if the appeal were permitted to go forward.

Accordingly, the appeal is dismissed, and the motion is moot. An appeal from an order that denied a petition for postconviction relief will not be permitted to proceed where it is clear that the appellant could not prevail. *Goldsmith v. State*, 2010 Ark. 158 (per curiam); *Watkins v. State*, 2010 Ark. 156 (per curiam); *Meraz v. State*, 2010 Ark. 121 (per curiam); *Smith v. State*, 367 Ark. 611, 242 S.W.3d 253 (2006) (per curiam).

Appellant first contended in his petition that he was not afforded effective assistance of counsel at trial. The exact allegation read:

> Defense counsel violated numerous Rules governing Att. Conduct. Counsel failed to met the case of the prosecutor, and client objectives not to be denied Liberty at Interest w/o Due Process of Law, and Equal-Protection thereof. Counsel failed in his competence, Thoroughness—Preperation and Scope of Advice in Case Matter, by refusing client's Request to challenge, suppress and or Rebutt the Sufficiency, Content and Execution of the Search Warrant. Which Prejudiced the defendant under the "Fruit's of the Poisonous Tree" doctrine. Where the Search Lacked consent for Execution, Rendering any Seized Evidence as Illegally Seized, defendants Arrest Unlawful; solely due to an Insufficient Search Warrant admitted before Jurior's at Trial. And considered upon defendant's coviction determination.

There was no factual substantiation offered for any claim. As an example, appellant did not state a basis on which his attorney could have mounted a meritorious challenge to the search warrant or provide any grounds on which to argue a denial of due process of law.

In an appeal from a trial court's denial of postconviction relief on a claim of ineffective assistance of counsel, the question presented is whether, under the standard set forth by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984), and based on the totality of the evidence, the trial court clearly erred in holding that counsel's performance

was not ineffective. *Watkins*, 2010 Ark. 156 , ___ S.W.3d ___ (citing *Small v. State*, 371 Ark. 244, 264 S.W.3d 512 (2007) (per curiam)). 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. *Id*. Actual ineffectiveness claims alleging deficiency in attorney performance are subject to a general requirement that the defendant affirmatively prove prejudice. *State v. Barrett*, 371 Ark. 91, 263 S.W.3d 542 (2007). Under *Strickland*, a claimant must show that counsel's performance was deficient, and the claimant must also show that this deficient performance prejudiced his defense so as to deprive him of a fair trial. *Walker v. State*, 367 Ark. 523, 241 S.W.3d 734 (2006) (per curiam). A petitioner must show that there is a reasonable probability that the fact-finder's decision would have been different absent counsel's errors. *Sparkman v. State*, 373 Ark. 45, 281 S.W.3d 277 (2008). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. *Id*.

The burden is entirely on the petitioner in a Rule 37.1 proceeding to provide facts that affirmatively support the claims of prejudice. *See Viveros v. State*, 2009 Ark. 548 (per curiam). Neither conclusory statements nor allegations without factual substantiation are sufficient to overcome the presumption that counsel was effective and do not warrant granting postconviction relief. *Eastin v.* State, 2010 Ark. 275; *Watkins*, 2010 Ark. 156 , ___ S.W.3d ___. A court is not required to research or develop arguments contained in a petition for postconviction relief. *See Eastin*, 2010 Ark. 275; *see also Britt v. State*, 2009 Ark. 569, ___

S.W.3d ___ (per curiam). Appellant here did not meet his burden of establishing that counsel was ineffective under the *Strickland* standard.

The remainder of the petition filed in the trial court consisted of a series of conclusory assertions of trial error and allegations of prosecutorial misconduct such as the claim that the prosecutor made unspecified improper statements concerning appellant's guilt and subjected petitioner to "selective prosecution." Claims of trial error, even those of constitutional dimension, must be raised at trial and on appeal. *Lee v. State*, 2010 Ark. 261(per curiam); *see also Taylor v. State*, 297 Ark. 627, 764 S.W.2d 447 (1989) (per curiam). Our postconviction rule does not permit a direct attack on a judgment or substitute for an appeal. *Hill v. State*, 2010 Ark. 102 (per curiam) (citing *Wainwright v. State*, 307 Ark. 569, 823 S.W.2d 449 (1992) (per curiam)). The sole exception lies in claims raised in a timely petition that are sufficient to void the judgment and render it a nullity. *Polivka v. State*, 2010 Ark. 152, ___ S.W.3d ___. Appellant did not contend, much less establish with factual substantiation and legal authority, that any claim of trial error raised in the petition was sufficient to void the judgment in his case. An argument with no citation to authority or convincing argument in its support that cannot be sustained without further research on the part of the court is not well taken. *See Watkins*, 2010 Ark. 156, ___ S.W.3d ___ (citing *Weatherford v. State*, 352 Ark. 324, 101 S.W.3d 227 (2003)).

Appeal dismissed; motion moot.