ARKANSAS SUPREME COURT

No. CR 05-69

NOT DESIGNATED FOR PUBLICATION	**Opinion Delivered May 18, 2006**
MELVIN LEROY LACY Appellant	*PRO SE* APPEAL FROM THE CIRCUIT COURT OF UNION COUNTY, CR 2002-366, HON. HAMILTON HOBBS SINGLETON, JUDGE
v.	
STATE OF ARKANSAS Appellee	AFFIRMED

PER CURIAM

Appellant Melvin Leroy Lacy was found guilty by a jury of possession of marijuana with intent to deliver, possession of cocaine with intent to deliver, possession of drug paraphernalia, and maintaining a drug premise. He was sentenced as a habitual offender to 210 years' imprisonment. The Arkansas Court of Appeals affirmed. *Lacy v. State*, CACR 03-1036 (Ark. App. 2004). Subsequently, appellant filed in the trial court a petition for postconviction relief pursuant to Ark. R. Crim. P. 37.1. The trial court denied the petition and appellant, proceeding *pro se*, has lodged an appeal in this court from that order.

In the instant matter, appellant complains that trial counsel rendered ineffective assistance by failing to file a pre-trial motion to suppress evidence pursuant to a search and seizure that appellant claims to be unconstitutional, and that the trial court erred when it denied appellant's *pro se* motion to dismiss the charges against him based upon the same search and seizure. We do not reverse a denial of postconviction relief unless the trial court's findings are clearly erroneous or clearly against the preponderance of the evidence. *Greene v. State*, 356 Ark. 59, 64, 146 S.W.3d

871, 876 (2004). 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. *Flores v. State*, 350 Ark. 198, 85 S.W.3d 896 (2002). We find no error and affirm the trial court.

Initially, the State notes that in spite of our previous instruction to appellant to file a substituted brief that conforms to our rules, appellant again failed to do so. *See Lacy v. State*, CR 05-69 (Ark. September 8, 2005) (*per curiam*). Here, a portion of appellant's abstract, related to trial testimony, is not set forth in the narrative first-person form as required by Ark. Sup. Ct. R. 4-2(a)(5). We need not consider affirmation or require appellant to file a substituted abstract or Addendum to cure the deficiencies in conformance with Ark. Sup. Ct. R. 4-2(b), as it is clear on the record before us that appellant could not prevail. *See Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (*per curiam*); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (*per curiam*).

The charges against appellant stemmed from controlled drug buys in 2002, soon after appellant had been released on parole from prior drug charges. As a result of the drug buys made by a confidential informant, the El Dorado Police Department and the Thirteenth Judicial District Drug Task Force sought and obtained a search warrant for 1511 E Ave., where appellant lived. During the raid on the premises pursuant to the search warrant, the police recovered a substantial number of items, including 32 grams of crack cocaine, 43 grams of marijuana, money, crack pipes and a police scanner tuned to the police department frequency.

Although represented by the Union County Public Defenders Office, appellant filed a *pro se* motion to dismiss the charges against him, claiming that the search conducted was based on a defective search warrant. Appellant informed his attorneys that he had filed his motion only after

doing so. On direct appeal, the court of appeals reviewed, and rejected, appellant's arguments for reversal based on denial of appellant's *pro se* motion to dismiss and based on denial of appellant's objection to introduction of items seized during the search.

To prevail on a claim of ineffective assistance of counsel, appellant must show that counsel's representation fell below an objective standard of reasonableness and that but for counsel's errors, the result of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668 (1984); *Andrews v. State*, 344 Ark. 606, 42 S.W.3d 484 (2001) (*per curiam*). In determining a claim of ineffective assistance of counsel, the totality of the evidence before the factfinder must be considered. *Greene v. State,* 356 Ark. 59, 146 S.W.3d 871 (2004).

As to the second prong of *Strickland*, appellant failed to show how the actions of trial counsel resulted in prejudice to him. Appellant apparently felt strongly enough about seeking suppression of the items seized that he filed a *pro se* motion to dismiss the charges based on this very argument, informing trial counsel after having done so. Therefore, any potential prejudice that might have resulted from trial counsel's ineffective assistance in not filing such a motion is negated by appellant's own actions by filing the motion to dismiss.

Furthermore, trial counsel is not ineffective for failing to make an argument that is meritless. *Greene, supra*. On direct appeal, the court of appeals rejected reversal of appellant's adverse ruling on the motion to dismiss and suppression of the evidence seized during execution of the search warrant. Appellant thus failed to show that counsel's performance fell below an objective standard of competence by failing to file an ultimately meritless motion.

As appellant has failed to show that trial counsel rendered ineffective assistance under either prong of *Strickland*, we find that the trial court did not err in denying appellant's Rule 37.1 petition

on this point.

Next, appellant claims that the trial court erred by failing to grant his *pro se* motion to dismiss. Rule 37.1 does not provide a means to reassert an issue previously decided on appeal. *Camargo v. State*, 337 Ark. 105, 987 S.W.2d 680 (1999). Appellant's *pro se* motion to dismiss seeking suppression of evidence seized during execution of the search warrant was addressed on appeal and is therefore not cognizable in a Rule 37.1 petition. We find no error and affirm.

Affirmed.