ARKANSAS SUPREME COURT

No. CR 07-1106

	Opinion Delivered September 25, 2008
LEONARD NOBLE Appellant	PRO SE MOTION FOR APPOINTMENT OF COUNSEL [CIRCUIT COURT OF SEBASTIAN COUNTY, GREENWOOD DISTRICT, CR 98-72, HON. STEPHEN M. TABOR, JUDGE]
v.	
STATE OF ARKANSAS Appellee	APPEAL DISMISSED; MOTION MOOT.

PER CURIAM

A judgment entered on October 22, 1999, reflects that a jury found appellant Leonard Noble guilty of burglary and rape and sentenced him to an aggregate term of 900 months' imprisonment in the Arkansas Department of Correction. The Arkansas Court of Appeals affirmed. *Noble v. State*, CACR 00-587 (Ark. App. Sept. 19, 2001). On June 1, 2007, appellant filed in the trial court a motion for testing and a petition styled as a motion seeking a writ of habeas corpus under Act 1780 of 2001 Acts of Arkansas, codified as Arkansas Code Annotated §§ 16-112-201 – 16-112-208 (Repl. 2006). After the State and appellant filed a number of additional pleadings, the trial court dismissed the motion, petition and subsequent amendments. Appellant brought an appeal in this court and has now filed the pending motion that seeks appointment of counsel to represent him. Because we dismiss the appeal, the motion is moot.

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. *Scott v. State*, ___ Ark. ___, ___ S.W.3d ___ (Mar.

6, 2008) (per curiam). Section 16-112-202(10) provides that a motion for relief under Act 1780 must be made in a timely fashion. Section 16-112-202(10) further provides for a rebuttable presumption against timeliness for any motion not made within thirty-six months of the date of conviction. Appellant filed his petition more than seven years after the judgment was entered against him, and the presumption is therefore applicable.

To overcome the presumption against timeliness, a petitioner must establish, in the petition, one of the five grounds listed in section 16-112-202(10)(B). *Douthitt v. State*, 366 Ark. 579, 237 S.W.3d 76 (2006) (per curiam). Under the act, a petitioner may establish that his petition is timely through a showing that incompetence substantially contributed to the delay, that the evidence to be tested is newly discovered, or that a new method of technology that is substantially more probative than prior testing is available. *Scott*, ___ Ark. at ___, ___ S.W.3d at ___. A petitioner may rebut the presumption based upon a claim that denial would result in manifest injustice, but may not do so solely through an assertion of his innocence. *Id.* Finally, a petitioner may rebut the presumption through other good cause. *Id.*

Appellant's motion, petition and amendments did not establish any of the grounds to rebut the presumption against timeliness. The motion and later pleadings alleged incompetence and newly discovered evidence as the bases to rebut the presumption. Appellant did not, however, plead any substantive facts to support those allegations. Appellant raised no basis for a determination that he personally was incompetent, apparently choosing instead to attempt to raise arguments concerning ineffective assistance of counsel, rather than his own incompetence. The only evidence on which appellant requested testing was hairs that were available and at issue at trial. Appellant did not include any discussion of evidence that had recently been discovered and did not identify any

evidence that he claimed was newly discovered, despite his claim that such evidence formed a basis to rebut the presumption of untimeliness.

Conclusory statements such as those offered by appellant do not serve to establish his claims. *See Leaks v. State*, 371 Ark. 581, ___ S.W.3d ___ (2007) (per curiam). Because appellant's petition did not provide facts to support any basis to rebut the presumption in Act 1780 against timeliness, the trial court did not err in dismissing the motion, petition and amendments. Appellant cannot, therefore, prevail on appeal and the appeal is accordingly dismissed.

Appeal dismissed; motion moot.

Glaze, J., not participating.