

ARKANSAS SUPREME COURT

No. CR 07-705

ANTHONY TYRONE MATTHEWS
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered November 15, 2007

PRO SE MOTION TO FILE BELATED
BRIEF [CIRCUIT COURT OF
JACKSON COUNTY, CR 2000-150,
HON. HAROLD S. ERWIN, JUDGE]

APPEAL DISMISSED; MOTION
MOOT.

PER CURIAM

In 2001, appellant Anthony Tyrone Matthews was found guilty by a jury of first-degree murder and sentenced to life imprisonment. We affirmed. *Matthews v. State*, 352 Ark. 166, 99 S.W.3d 403 (2003).

In 2007, appellant filed in the trial court a pro se motion seeking a copy of his trial transcript at public expense, claiming that he was indigent. The basis for the motion was that he needed the transcript to abstract the original record, citing Ark. R. Crim. P. 37.1. However, no Rule 37.1 petition for postconviction relief had been filed by appellant. The trial court denied the motion, and appellant, proceeding pro se, lodged an appeal here from the order.

Now before us is appellant's pro se motion to file a belated brief. We need not consider the motion as it is apparent that appellant could not prevail in this appeal if it were permitted to go forward. Accordingly, we dismiss the appeal and hold the motion moot. An appeal from an order that denied a petition for postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *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 transcript from the direct appeal is on file with the court, and thus any motion for a copy of it should have been addressed to this court. This court decides motions for transcript because such motions are considered to be requests for postconviction relief. *See Williams v. State*, 273 Ark. 315, 619 S.W.2d 628 (1981). Therefore, even if appellant had a postconviction remedy available to him, his motion was directed to the wrong court.¹

Appeal dismissed; motion moot.

¹On June 1, 2007, appellant filed a motion in this court seeking a copy of the direct appeal transcript at public expense. The motion was denied. *Matthews v. State*, CR 01-1135 (Ark. Sept. 20, 2007) (per curiam).