

ARKANSAS SUPREME COURT

No. CR 07-709

JACQUELYNE VELCOFF
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered May 8, 2008

PRO SE MOTION FOR
APPOINTMENT OF COUNSEL
[CIRCUIT COURT OF CLARK
COUNTY, CR 2003-187, HON. JOHN A.
THOMAS, JUDGE]

MOTION DENIED.

PER CURIAM

Now before us is appellant's third pro se motion for appointment of counsel in the appeal from the denial of her claim under Ark. R. Crim. P. 37.1 based on ineffective assistance of counsel. The second pro se motion for appointment of counsel was denied due to appellant's failure to demonstrate that the appeal has merit. *Velcoff v. State*, CR 07-709 (Ark. Jan. 24, 2008) (per curiam). In this motion, as a basis for appointment of counsel, appellant generally claims that trial counsel was distracted from properly handling her criminal matter while focused on his own disbarment proceeding and failed to deal with her case in a diligent and zealous manner.

To restate the standards applicable here, postconviction matters, such as petitions pursuant to Rule 37.1, are considered civil in nature with respect to the right to counsel, and there is no absolute right to appointment of counsel in civil matters. See *Virgin v. Lockhart*, 288 Ark. 92, 702 S.W.2d 9 (1986) (per curiam). Nevertheless, this court has held that if an appellant makes a substantial showing that she is entitled to relief in a postconviction appeal and that she cannot proceed without counsel, we will appoint counsel. See *Howard v. Lockhart*, 300 Ark. 144, 777

S.W.2d 223 (1989) (per curiam).

While appellant generally alleges a disability on the part of trial counsel, she fails to demonstrate actual prejudice to her defense as a result. This requirement comprises the second prong for establishing ineffective assistance of counsel under *Strickland v. Washington*, 466 U.S. 668 (1984). Claims of failure of counsel to zealously and diligently represent a client are not, in themselves, sufficient to make a substantial showing that she would be entitled to relief in this postconviction appeal.

Motion denied.