

ARKANSAS SUPREME COURT

No. CR 07-860

EDWARD FRANKLIN WOOD, JR.
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered January 10, 2008

PRO SE MOTIONS FOR EXTENSION
OF TIME TO FILE BRIEF [CIRCUIT
COURT OF BENTON COUNTY, CR
2005-1009, HON. DAVID S. CLINGER,
JUDGE]

APPEAL DISMISSED; MOTIONS
MOOT.

PER CURIAM

Appellant Edward Franklin Wood, Jr., entered a plea of guilty to manufacturing a controlled substance (methamphetamine) in exchange for the dismissal of two other criminal charges. The judgment filed on April 11, 2007, reflected that he was sentenced to 144 months' imprisonment with suspended imposition of forty-eight months and fined \$1,000.

Subsequently, on May 22, 2007, appellant filed in the trial court an "appeal" of the guilty plea based upon inadequate representation of counsel. In an order entered on May 30, 2007, the trial court treated the document as a petition for relief pursuant to Ark. R. Crim. P. 37.1, and denied the petition for lack of verification. Appellant then filed in the trial court on June 11, 2007, a second document entitled "appeal" that was again based on ineffective assistance of counsel. On July 5, 2007, appellant timely filed a verified pro se petition for postconviction relief pursuant to Rule 37.1. In an order dated July 18, 2007, the trial court denied the July 5, 2007, petition. On July 30, 2007, an order was entered that treated the June 11, 2007, "appeal" as a Rule 37.1 petition and denied the

petition for lack of verification.

Now before us are appellant's two pro se motions for extension of time to file the brief-in-chief. As appellant could not be successful on appeal, the appeal is dismissed and the motions are moot. An appeal from an order that denied a petition for postconviction relief or other civil remedy 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).

When appellant tendered the record on appeal to this court, it was assumed that the "appeal" dated June 11, 2007, was the notice of appeal from the order entered on May 30, 2007, that denied appellant's first Rule 37.1 petition. If indeed it was intended by appellant to be a timely notice of appeal from that order, we find no merit to the appeal.

Criminal Procedure Rule 37.1(d) requires that a petition for postconviction relief be verified and an unverified petition may not be filed without leave of the court. *Morris v. State*, 365 Ark. 217, 226 S.W.3d 790 (2006) (per curiam). The verification requirement for a petition is of substantive importance to prevent perjury, and in order to serve this purpose, a petitioner must execute the verification. *Collins v. State*, 365 Ark. 411, 231 S.W.3d 717 (2006); *Boyle v. State*, 362 Ark. 248, 208 S.W.3d 134 (2005) (per curiam). Here, appellant failed to verify the Rule 37.1 petition filed on May 22, 2007, and would not prevail on appeal.

Alternatively, appellant may not have intended the June 11, 2007, document to act as a notice of appeal from the May 30, 2007, order. If appellant instead intended to appeal from the July 18, 2007, order denying the Rule 37.1 petition filed on July 5, 2007, that matter is not before us. Pursuant to Ark. R. App. P.–Civ. 4(a), a notice of appeal was required to be filed within thirty days

from the entry of the July 18, 2007, order. The record did not contain such a notice of appeal filed by appellant and therefore the order of July 18, 2007, is not before us.

Appeal dismissed; motions moot.