ARKANSAS SUPREME COURT

No. CR 08-1079

	Opinion Delivered **November 13, 2008**
RICHARD L. STRONG Appellant	APPELLEE'S MOTION TO DISMISS APPEAL [CIRCUIT COURT OF GREENE COUNTY, CR 2006-71, HON. CINDY THYER, JUDGE]
v.	
STATE OF ARKANSAS Appellee	MOTION GRANTED; APPEAL DISMISSED.

PER CURIAM

In 2006, appellant Richard Strong was found guilty by a jury of two counts of rape and sentenced to two consecutive terms of life imprisonment. We affirmed. *Strong v. State*, 372 Ark. 404, ___ S.W.3d ___ (2008).

Subsequently, appellant timely filed in the trial court a pro se petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1. The petition was dismissed on the ground that it was not properly verified as required by Arkansas Rule of Criminal Procedure 37.1(c). Appellant has lodged an appeal here from the order. Now before us is a motion filed by the appellee State asking that the appeal be dismissed, correctly noting that Rule 37.1(d) provides that the court shall dismiss any petition that fails to comply with Rule 37.1(c).

The motion is granted. 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. *Booth v. State*, 353 Ark. 119, 110 S.W.3d 759 (2003) (per curiam). It is clear from the record lodged in this appeal that appellant's

Rule 37.1 petition was not verified in accordance with the rule; as a result, he cannot prevail on appeal.[1]

Rule 37.1(c) provides the form of the affidavit, to be sworn before a notary or other official authorized to administer oaths, required to appear on the petition. Here, it is plain from the record lodged on appeal that appellant did not properly verify the petition. As a result, the petition was subject to dismissal. *See Bunch v. State*, 370 Ark. 113, 257 S.W.3d 533 (2007) (per curiam).

Motion granted; appeal dismissed.

---

[1]Appellant also filed a motion to amend the Rule 37.1 petition and an amended petition that did not comply with Rule 37.1(c).