

# ARKANSAS SUPREME COURT

No. CR 08-98

REGINALD C. MITCHELL  
Appellant

v.

STATE OF ARKANSAS  
Appellee

Opinion Delivered April 3, 2008

PRO SE MOTION FOR EXTENSION  
OF TIME TO FILE APPELLANT'S  
BRIEF [CIRCUIT COURT OF  
ARKANSAS COUNTY, NORTHERN  
DISTRICT, CR 2004-224, HON.  
DAVID G. HENRY, JUDGE]

APPEAL DISMISSED; MOTION  
MOOT.

## PER CURIAM

A jury found appellant Reginald C. Mitchell guilty of first-degree forgery and sentenced him to 360 months' imprisonment in the Arkansas Department of Correction. The Arkansas Court of Appeals affirmed the judgment. *Mitchell v. State*, CACR 06-1438 (Ark. App. Sept. 19, 2007). Appellant timely filed a petition for postconviction relief under Ark. R. Crim. P. 37.1, which was dismissed. Appellant has lodged an appeal of that order in this court and now brings a motion requesting that we grant an extension of time in which to file his brief.

We need not consider the motion because it is clear that appellant cannot prevail on appeal. We accordingly dismiss the appeal and the motion is moot. This court has consistently held that 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).

Here, appellant filed a petition that was timely under Rule 37.1, but failed to verify the petition as required by Ark. R. Crim. P. 37.1(c). Effective March 1, 2006, Rule 37.1 was amended

to more clearly require that a Rule 37.1 petition be verified. That amendment provided a form of affidavit to be attached to the petition. *Bunch v. State*, 370 Ark. 113, \_\_\_ S.W.3d \_\_\_ (2007) (per curiam). Appellant's petition was notarized, but no affidavit was attached. Under Ark. R. Crim. P. 37.1(d), the circuit clerk is not to accept for filing any petition that fails to comply with the requirements of Rule 37.1(c). The trial court could not consider the issues in the petition. *Id.*; *see also Shaw v. State*, 363 Ark.156, 211 S.W.3d 506 (2005) (per curiam). In accordance with Rule 37.1(d), we dismiss the petition and appellant's appeal.

Appeal dismissed; motion moot.