

SUPREME COURT OF ARKANSAS

No. CR 11-1191

MITCHELL SCOTT JOHNSON
APPELLANT

v.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered May 17, 2012

PRO SE MOTION FOR APPOINTMENT
OF COUNSEL [BENTON COUNTY
CIRCUIT COURT, CR 08-274, HON.
ROBIN F. GREEN, JUDGE]APPEAL DISMISSED; MOTION MOOT.

PER CURIAM

This court granted appellant Mitchell Scott Johnson's motion for belated appeal of an order by the trial court that denied his petition for postconviction relief under Arkansas Rule of Criminal Procedure 37.1 (2011). *Johnson v. State*, 2012 Ark. 47 (per curiam). Appellant has now filed a pro se motion for appointment of counsel. We dismiss the appeal, and the motion is moot.

An appeal from an order that denied a petition for a postconviction remedy will not be permitted to proceed where it is clear that the appellant could not prevail. *Perry v. State*, 2012 Ark. 98 (per curiam). Appellant indicates in the motion that he has been paroled from the Arkansas Department of Correction. Because he is no longer incarcerated for the judgment at issue in his Rule 37.1 petition, granting relief in this case would have no practical effect.¹ *See Bobanan v. State*, 336 Ark. 367, 985 S.W.2d 708 (1999). Our precedent is clear that a person on parole is not eligible to proceed under Rule 37.1. *Branning v. State*, 2010 Ark. 401. Accordingly,

¹Appellant is currently incarcerated in a Federal Correctional Institution in Florida on other charges.

we dismiss the appeal because appellant can no longer proceed under Rule 37.1, even if his arguments had merit, and appellant cannot prevail on appeal. The motion for appointment of counsel is therefore moot.

Appeal dismissed; motion moot.