

SUPREME COURT OF ARKANSAS

No. CR 12-383

BOBBY HATTON

APPELLANT

v.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered June 21, 2012

PRO SE MOTIONS FOR APPOINTMENT OF COUNSEL AND FOR DUPLICATION OF BRIEF AT PUBLIC EXPENSE [PULASKI COUNTY CIRCUIT COURT, CR 04-2016, CR 07-267, CR 08-3621, HON. HERBERT WRIGHT, JUDGE]

APPEAL DISMISSED; MOTIONS MOOT.

PER CURIAM

Appellant, Bobby Hatton, was found guilty in case number CR 08-3621 of first-degree terroristic threatening and second-degree domestic battery in the presence of a child. Immediately after the trial for battery and terroristic threatening, a hearing was held on the State's petitions to revoke appellant's terms of probation in case numbers CR 04-2016 and CR 07-267. The trial court found that appellant had violated the conditions of his probations by committing the offenses of which he had been convicted in CR 08-3621 and revoked both probations. Appeals in all three cases were consolidated. The Arkansas Court of Appeals affirmed the judgment in CR 08-3621 and revocation orders in the other two cases. *Hatton v. State*, 2011 Ark. App. 517.

Appellant subsequently filed in the trial court a timely pro se petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2011) that encompassed all three cases. The petition was denied, and appellant lodged an appeal in this court from the order. Now before us are two pro se motions filed by appellant in which he seeks appointment of

counsel and to have his brief duplicated at public expense.¹ As it is clear from the record that appellant could not prevail on appeal, we dismiss the appeal. The motions are moot.

An appeal from an order that denied a petition for postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *Watson v. State*, 2012 Ark. 27 (per curiam); *Riddell v. State*, 2012 Ark. 11 (per curiam); *Hendrix v. State*, 2012 Ark. 10 (per curiam); *Croft v. State*, 2010 Ark. 83 (per curiam); *Crain v. State*, 2009 Ark. 512 (per curiam). In this case, the circuit court did not have jurisdiction to consider appellant's Rule 37.1 petition.

Appellant's petition was not in compliance with the rule in that it was not verified in accordance with Rule 37.1(c).² Rule 37.1(c) requires that the petition be accompanied by an affidavit that is sworn before a notary or other officer authorized to administer oaths; in substantially the form noted in that provision; and attesting that the facts stated in the petition are true, correct, and complete. Rule 37.1(d) requires that the circuit clerk reject an unverified petition and that the circuit court or any appellate court must dismiss a petition that fails to

¹After the motion to duplicate the brief was filed, appellant filed the brief by submitting the number of copies of it required by our rules. Thus, the motion for duplication of brief at public expense would have been moot even if this court had not found cause to dismiss the appeal as set out in this opinion.

²The petition was also subject to dismissal on the ground that its length exceeded the length allowed for petitions pursuant to Rule 37.1(b), which states that a petition under this rule, "whether handwritten or typed, shall be clearly legible [and] shall not exceed ten pages of thirty lines per page and fifteen words per line." Appellant's petition, which included a brief-in-support, was sixteen pages in length. Attachments are considered a part of the petition, and a court is not required to consider a petition that does not conform to Rule 37.1(b). *Murry v. State*, 2011 Ark. 343 (per curiam). This court has held that the rule limiting petitions to ten pages is an entirely reasonable restriction on petitioners seeking postconviction relief. *See Davis v. State*, 2010 Ark. 366 (per curiam); *Sanders v. State*, 352 Ark. 16, 98 S.W.3d 35 (2003).

comply with Rule 37.1(c). See *Williamson v. State*, 2012 Ark. 170 (per curiam); see also *Stephenson v. State*, 2011 Ark. 506 (per curiam). Appellant's petition was notarized, but it did not contain the verification required by the rule.

The verification requirement for a postconviction-relief petition is of substantive importance to prevent perjury. *Williamson*, 2012 Ark. 170; *Tucker v. State*, 2011 Ark. 543 (per curiam). We have held that a circuit court lacks jurisdiction to consider arguments raised in an unverified Rule 37.1 petition. *Williamson*, 2012 Ark. 170; *Stephenson*, 2011 Ark. 506. Because appellant's Rule 37.1 petition was not in compliance with Rule 37.1(c), it should not have been accepted for filing, and it did not act to confer jurisdiction on the trial court to consider the merits of the petition. Where the circuit court lacks jurisdiction, the appellate court also lacks jurisdiction. *Williamson*, 2012 Ark. 170; *Talley v. State*, 2011 Ark. 497 (per curiam); *Gilliland v. State*, 2011 Ark. 480 (per curiam).

Appeal dismissed; motions moot.