

SUPREME COURT OF ARKANSAS

No. CR 12-445

DESMOND D. MARTIN
v.
STATE OF ARKANSAS

PETITIONER
RESPONDENT

Opinion Delivered August 14, 2012

PRO SE MOTION FOR BELATED APPEAL [FAULKNER COUNTY CIRCUIT COURT, 23CR 10-691, 23CR 10-692, HON. CHARLES CLAWSON, JUDGE]

MOTION DISMISSED.

PER CURIAM

On January 4, 2012, the Faulkner County Circuit Court denied a pro se petition for postconviction relief pursuant to Arkansas Criminal Procedure Rule 37.1 (2011) filed by petitioner Desmond D. Martin. Petitioner did not timely file a notice of appeal from the order, and he now seeks leave to proceed with a belated appeal.

We need not consider the merits of the motion for belated appeal because it is clear from the record that petitioner could not prevail if an appeal were permitted to go forward. An appeal from an order that denied a petition for postconviction relief will not be allowed to proceed 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 because it did not comply with Rule 37.1(c).

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 a petition that does not conform to the rule and that the circuit court or any appellate court must dismiss a petition that fails to comply with Rule 37.1(c). *Williamson v. State*, 2012 Ark. 170 (per curiam); *see Stephenson v. State*, 2011 Ark. 506 (per curiam); *Mitchael v. State*, 2009 Ark. 516 (per curiam). Appellant's petition contained a statement that the facts in the petition were true, correct, and complete, but the statement was not sworn before a notary or other officer authorized to administer oaths. Thus, the petition did not bear the sworn verification required by the rule. *See Mitchael*, 2009 Ark. 516.

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).

Motion dismissed.

Desmond D. Martin, pro se petitioner.

No response.