

SUPREME COURT OF ARKANSAS

No. CR 10-482

EVINS DEWAYNE COGSHELL
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered October 7, 2010

PRO SE MOTION FOR EXTENSION
OF TIME [CIRCUIT COURT OF
PULASKI COUNTY, CR 2006-2015,
CR 2007-495, CR 2008-4186, HON.
BARRY A. SIMS, JUDGE]

APPEAL DISMISSED; MOTION
MOOT.

PER CURIAM

On April 14, 2009, three judgment and commitment orders were entered in Pulaski County Circuit Court reflecting that appellant Evins Dewayne Cogshell had entered pleas of guilty on four counts of rape and one count of failure to appear. The court sentenced appellant to 300 months' incarceration on each count of rape and to 180 months' incarceration on the failure to appear charge. The judgment on the failure to appear charge indicated that the sentence was to run concurrently to the sentences on the other two judgments. The judgments for the rape charges, one on a single count and one on three counts of rape, referenced each other and indicated that the sentence in the judgment on a single count of rape was to run consecutively to the concurrent sentences imposed in the judgment for three counts of rape.

On May 26, 2009, and July 1, 2009, appellant filed two pleadings in the trial court, each styled as an "appeal" for "ineffective counsel." The trial court treated the second

pleading as a petition for postconviction relief under Arkansas Rule of Criminal Procedure 37.1 (2010), and, following a hearing, denied relief by order entered January 26, 2010. Appellant has lodged an appeal of the order in this court, and he has now filed a motion for an extension of time in which to file his brief. Because we dismiss the appeal, the motion is moot.

An appeal from an order that denied a petition for a postconviction remedy will not be permitted to go forward where it is clear that the appellant could not prevail. *Croft v. State*, 2010 Ark. 83 (per curiam); *Crain v. State*, 2009 Ark. 512 (per curiam). Here, it is clear that appellant cannot prevail because neither of the two pleadings filed in the trial court were properly verified as required by Rule 37.1(c).

Rule 37.1(c) requires a petition to be accompanied by an appropriate affidavit. Ark. R. Crim. P. 37.1(c); see *Smith v. State*, 2010 Ark. 122 (per curiam). The verification requirement for a postconviction-relief petition is of substantive importance to prevent perjury. *Smith*, 2010 Ark. 122 (citing *Shaw v. State*, 363 Ark. 156, 211 S.W.3d 506 (2005) (per curiam)). Under Rule 37.1(d), the circuit court shall not accept for filing, and must dismiss, a petition that is not verified as required by Rule 37.1(c). Ark. R. Crim. P. 37.1(d); *Smith*, 2010 Ark. 122; see *Waters v. State*, 2009 Ark. 530 (per curiam). Accordingly, we dismiss the appeal, and appellant's motion is therefore moot.

Appeal dismissed; motion moot.