

Cite as 2023 Ark. App. 144

ARKANSAS COURT OF APPEALS

DIVISION II

No. CR-22-390

VASQUEZ HAYES

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered March 8, 2023

APPEAL FROM THE MILLER COUNTY
CIRCUIT COURT
[NO. 46CR-16-13]

HONORABLE CARLTON D. JONES, JUDGE

DISMISSED

WAYMOND M. BROWN, Judge

A Miller County jury convicted appellant Vasquez Hayes of two counts of rape and one count each of aggravated residential burglary, aggravated robbery, kidnapping, theft of property with a value of greater than \$5,000 and less than \$25,000, and theft of a debit or credit card. Hayes was sentenced to an aggregate term of eighty years' incarceration in the Arkansas Department of Correction. This court affirmed Hayes's convictions and sentences on direct appeal.¹ Hayes then filed a pro se petition seeking postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1. Without an evidentiary hearing, his petition for postconviction relief was denied in an order entered on May 12, 2022. We dismiss the appeal.

¹See *Hayes v. State*, 2021 Ark. App. 367.

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.² Here, Hayes failed to verify the petition he filed as required by Rule 37.1(c). “Effective March 1, 2006, Rule 37.1 was amended to more clearly require that a Rule 37.1 petition be verified.”³ That amendment also required that a form affidavit be attached to the petition. Specifically, Rule 37.1(c) provides that the petition shall be accompanied by the petitioner’s affidavit, sworn before a notary or other officer authorized by law to administer oaths, stating that he or she has read the petition for postconviction relief and that the facts stated in the petition are true, correct, and complete to the best of the petitioner’s knowledge and belief. Hayes’s petition was notarized, but the required form affidavit was not attached to the petition. Under Rule 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 circuit court could not consider the issues raised in the petition.⁴

The verification requirement for a petition for postconviction relief is of substantive importance to prevent perjury.⁵ The circuit court or any appellate court shall dismiss any petition that fails to comply with subsection (c) of Rule 37.1.⁶ Because Hayes’s Rule 37.1 petition was not properly verified, we must dismiss the appeal.

²*Ransom v. State*, 2009 Ark. 215.

³*Id.*

⁴Ark. R. Crim. P. 37.1(d); *see also Shaw v. State*, 363 Ark. 156, 211 S.W.3d 506 (2005).

⁵*Butler v. State*, 2014 Ark. 380

⁶*See Ransom, supra.*

Dismissed.

THYER and WOOD, JJ., agree.

Vasquez Hayes, pro se appellant.

Leslie Rutledge, Att'y Gen., by: *Rachel Kamp*, Sr. Ass't Att'y Gen., for appellee.