

ARKANSAS SUPREME COURT

No. CR 08-941

DARWIN GAYE
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered February 5, 2009

PRO SE MOTIONS TO SUPPLEMENT
BRIEF AND FOR WRIT OF
CERTIORARI [CIRCUIT COURT OF
PULASKI COUNTY, CR 2006-2226,
HON. CHRIS PIAZZA, JUDGE]

APPEAL DISMISSED; MOTIONS
MOOT.

PER CURIAM

A judgment entered January 24, 2007, reflects that appellant Darwin Gaye entered guilty pleas to charges of rape, residential burglary, and kidnapping in Pulaski County Circuit Court and received an aggregate sentence of 1080 months' imprisonment in the Arkansas Department of Correction. Appellant filed in this court a pro se motion for belated appeal of the judgment that was denied. *Gaye v. State*, CR 07-814 (Ark. Oct. 25, 2007) (per curiam).

Appellant next filed in the trial court a petition for writ of error coram nobis that was denied by order entered June 2, 2008. Appellant filed a notice of appeal as to that order and has lodged the appeal in this court. The parties have submitted their briefs and appellant has filed a motion to supplement his brief and a motion for writ of certiorari requesting this court to include within the record certain documents from the Arkansas State Crime Laboratory and police investigative reports. We need not consider the merits of the motions because it is clear from a cursory review of the record that appellant cannot prevail on appeal.

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. *Anderson v. State*, 352 Ark. 36, 98 S.W.3d 403 (2003) (per curiam). Here, appellant has failed to provide a record sufficient to show that the trial court erred. This court has repeatedly stated that it is the appellant's burden to bring up a record sufficient to demonstrate that the trial court was in error, and where the appellant fails to meet its burden, this court has no choice but to affirm the trial court. *Davidson v. State*, 363 Ark. 86, 210 S.W.3d 887 (2005).

The record before us contains the order dismissing appellant's petition for writ of error coram nobis, but it does not contain the petition that the order addressed. The only petition contained in the record is marked as filed on July 8, 2008, after the order appealed was entered.¹ Appellant has not filed a motion for writ of certiorari that requests the petition addressed by the order be brought up. As appellant cannot prevail, we dismiss the appeal, and the motions are therefore moot.

Appeal dismissed; motions moot.

¹ Appellant's brief includes in its addendum a copy of a later order that references a subsequent petition. That order is not in the record or included in the notice of appeal.