

SUPREME COURT OF ARKANSAS

No. CR 10-669

LLOYD JAMES CALLIE

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered September 15, 2011

PRO SE APPEAL FROM THE SEBASTIAN COUNTY CIRCUIT COURT, GREENWOOD DISTRICT [CR-2001-07G], HON. J. MICHAEL FITZHUGH, JUDGE

AFFIRMED.

PER CURIAM

Appellant Lloyd James Callie appeals from the circuit court's order denying his motion to vacate his order of judgment and commitment. In 2001, appellant was convicted of two counts of rape and sentenced to 480 months' imprisonment. He appealed, and the Arkansas Court of Appeals affirmed his convictions and sentence. *Callie v. State*, CACR 01-1351 (Ark. App. Jan. 22, 2003) (unpublished). On March 31, 2010, appellant filed a motion to vacate his judgment and commitment in the circuit court, and the circuit court denied his motion. He now appeals that order. We affirm.

In his motion to vacate, appellant asserted that his due-process rights were violated by the admission of certain evidence pursuant to Arkansas Rule of Evidence 404(b) (2001). The circuit court correctly treated the motion as one for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2005). However, the circuit court found, and a review of the record's docket sheet confirms, that appellant had previously filed a Rule 37.1 petition, which was denied by the circuit court. Arkansas Rule of Criminal Procedure 37.2(b)(2011) does not



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allow for a subsequent petition unless the original pleading was denied without prejudice to file a second petition, and appellant has not demonstrated that his first Rule 37.1 petition was denied without prejudice. *Carter v. State*, 2010 Ark. 349 (per curiam); *Morgan v. State*, 2009 Ark. 362 (per curiam). Because appellant was not entitled to file a second Rule 37.1 petition, we affirm the circuit court's order.

Affirmed.