

**SUPREME COURT OF ARKANSAS**

No. CR 11-1279

LEE CHARLES MILLSAP, JR.  
a/k/a SOLOMON LEE MILLSAP  
APPELLANT

v.

STATE OF ARKANSAS  
APPELLEE

**Opinion Delivered** April 19, 2012

PRO SE MOTIONS FOR EXTENSION  
OF TIME TO FILE BRIEF AND FOR  
APPOINTMENT OF COUNSEL  
[PULASKI COUNTY CIRCUIT COURT,  
CR 97-865, HON. BARRY SIMS, JUDGE]

APPEAL DISMISSED; MOTIONS  
MOOT.

**PER CURIAM**

In 1998, appellant Lee Charles Millsap, Jr., who is also known as Solomon Lee Millsap, entered in the Pulaski County Circuit Court a plea of guilty to multiple felony offenses. He was sentenced to an aggregate term of life imprisonment without parole.

Appellant subsequently filed in the trial court a petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (1998). The petition was denied, and this court affirmed the order. *Millsap v. State*, CR 99-437 (Ark. Sept. 21, 2000) (unpublished per curiam).

On September 21, 2011, appellant filed in the trial court a pro se “third motion for appointment of counsel.” In the motion, appellant contended that he was entitled as an indigent prisoner charged with a capital offense to appointment of an attorney to process a petition for writ of habeas corpus before the circuit court. The trial court denied the motion, and appellant lodged an appeal in this court from the order. He now seeks an extension of time to file his brief and appointment of counsel to represent him on appeal.

We need not consider the motions because it is clear that appellant could not prevail on appeal. This court will not permit an appeal from an order that denied a petition for postconviction relief to go forward where it is clear that the appellant could not prevail. *Tolliver v. State*, 2012 Ark. 46 (per curiam); *Hendrix v. State*, 2012 Ark. 10 (per curiam); *Tucker v. State*, 2011 Ark. 543 (per curiam) (citing *Fernandez v. State*, 2011 Ark. 418, \_\_\_ S.W.3d \_\_\_ (per curiam)); *Johnson v. State*, 2011 Ark. 455 (per curiam); *Clemons v. State*, 2011 Ark. 345 (per curiam); *Gilcrease v. State*, 2011 Ark. 108 (per curiam); *Wormley v. State*, 2011 Ark. 107 (per curiam); *Delamar v. State*, 2011 Ark. 87 (per curiam); *Morgan v. State*, 2010 Ark. 504 (per curiam); *Goldsmith v. State*, 2010 Ark. 158 (per curiam); *Watkins v. State*, 2010 Ark. 156, \_\_\_ S.W.3d \_\_\_ (per curiam); *Meraç v. State*, 2010 Ark. 121 (per curiam); *Smith v. State*, 367 Ark. 611, 242 S.W.3d 253 (2006) (per curiam).

Appellant did not contend that there was any active proceeding in his case on the docket of the trial court in which a motion for appointment of counsel could be entertained. He further pointed to no legal requirement that an attorney be appointed to represent a convicted defendant in circuit court when that defendant has filed no petition for postconviction relief or other pleading. Moreover, there is no absolute right to appointment of counsel in postconviction proceedings, even in instances where the petitioner has filed a timely petition for postconviction relief. See *Smith v. State*, 2010 Ark. 365 (per curiam). As appellant did not establish that he was entitled to the relief sought, the trial court did not err in denying the motion.

Appeal dismissed; motions moot.