

SUPREME COURT OF ARKANSAS

No. CR13-83

GREGORY HOLT
a/k/a ABDUL MAALIK MUHAMMAD
PETITIONER

v.

STATE OF ARKANSAS
RESPONDENT

Opinion Delivered February 28, 2013

PRO SE MOTIONS TO LODGE
APPEAL AND FOR APPOINTMENT
OF COUNSEL [PULASKI COUNTY
CIRCUIT COURT, 60CR 09-2188,
HON. LEON JOHNSON, JUDGE]

MOTION TO LODGE APPEAL
TREATED AS MOTION FOR
BELATED APPEAL AND DISMISSED;
MOTION FOR APPOINTMENT OF
COUNSEL MOOT.

PER CURIAM

On August 14, 2012, the Pulaski County Circuit Court denied a pro se petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2012) filed by petitioner Gregory Holt, who is also known as Abdul Maalik Muhammad. Petitioner did not timely file a notice of appeal from the order, and now before us is his motion to lodge the appeal. We treat the motion as a motion for belated appeal of the order pursuant to Arkansas Rule of Appellate Procedure—Criminal 2(e) (2012). Petitioner has also filed a motion for appointment of counsel to represent him on appeal.

We need not consider the merits of the motions because it is clear from the record that petitioner could not prevail if an appeal were permitted to go forward. An appeal from an order that denied a petition for postconviction relief will not be allowed to proceed where it is clear that the appellant could not prevail. *Crain v. State*, 2012 Ark. 412 (per curiam); *Martin v. State*, 2012 Ark. 312 (per curiam); *Watson v. State*, 2012 Ark. 27 (per curiam); *Riddell v.*

State, 2012 Ark. 11 (per curiam); *Hendrix v. State*, 2012 Ark. 10 (per curiam); *Croft v. State*, 2010 Ark. 83 (per curiam); *Crain v. State*, 2009 Ark. 512 (per curiam). In this case, the circuit court did not have jurisdiction to consider appellant's Rule 37.1 petition because it did not comply with Rule 37.1(c).

Rule 37.1(c) requires that the petition be accompanied by an affidavit that is sworn before a notary or other officer authorized to administer oaths; in substantially the form noted in that provision; and attesting that the petitioner has read the petition and that the facts stated in the petition are true, correct, and complete to the best of his knowledge and belief. Rule 37.1(d) requires that the circuit clerk reject a petition that does not conform to the rule and that the circuit court or any appellate court must dismiss a petition that fails to comply with Rule 37.1(c). *Martin*, 2012 Ark. 312; *Williamson v. State*, 2012 Ark. 170 (per curiam); see *Stephenson v. State*, 2011 Ark. 506 (per curiam); *Mitchael v. State*, 2009 Ark. 516 (per curiam). Appellant's signature on the petition was notarized, but the petition contained no statement that he had read the petition and that the facts in the petition were true, correct, and complete to the best of his knowledge and belief. Thus, the petition did not bear the sworn verification required by the rule. See *Martin*, 2012 Ark. 312; see also *Mitchael*, 2009 Ark. 516.

The verification requirement for a postconviction-relief petition is of substantive importance to prevent perjury. *Martin*, 2012 Ark. 312; *Williamson*, 2012 Ark. 170; *Tucker v. State*, 2011 Ark. 543 (per curiam). We have held that a circuit court lacks jurisdiction to consider arguments raised in an unverified Rule 37.1 petition. *Martin*, 2012 Ark. 312; *Williamson*, 2012 Ark. 170; *Stephenson*, 2011 Ark. 506. Because appellant's Rule 37.1 petition

was not in compliance with Rule 37.1(c), it should not have been accepted for filing, and it did not act to confer jurisdiction on the trial court to consider the merits of the petition. Where the circuit court lacks jurisdiction, the appellate court also lacks jurisdiction. *Winnett v. State*, 2012 Ark. 404 (per curiam); *Martin*, 2012 Ark. 312; *Williamson*, 2012 Ark. 170; *Talley v. State*, 2011 Ark. 497 (per curiam); *Gilliland v. State*, 2011 Ark. 480 (per curiam).

Motion to lodge appeal treated as motion for belated appeal and dismissed; motion for appointment of counsel moot.