

Cite as 2009 Ark. 312 (unpublished)

ARKANSAS SUPREME COURT

No. CR 09-319

TERRY WAYNE PORTER
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered May 21, 2009

PRO SE MOTION FOR ACCESS TO
RECORD AND EXTENSION OF
TIME TO FILE APPELLANT'S BRIEF
[CIRCUIT COURT OF PULASKI
COUNTY, CR 83-2058, HON.
MARION HUMPHREY, JUDGE]

APPEAL DISMISSED; MOTION
MOOT.

PER CURIAM

In 1984, appellant Terry Wayne Porter entered a guilty plea to capital murder and received a sentence of life imprisonment without parole. In 2008, appellant filed in the trial court a petition to vacate the judgment that was denied. Appellant lodged an appeal of the order denying postconviction relief and has filed a motion requesting access to the record to prepare his brief and an extension of time in which to file his brief. We dismiss the appeal and the motion is therefore moot.

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. *Bunch v. State*, 370 Ark. 113, 257 S.W.3d 533 (2007) (per curiam). In his petition, appellant asserted that he did not receive the sentence he had been advised he would receive under the plea agreement, that the State did not have sufficient proof for the offense, that his plea was



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coerced and not intelligently or voluntarily entered, and that trial counsel was ineffective. At least a portion of the claims appellant raised were cognizable in a proceeding under Arkansas Rule of Criminal Procedure 37.1. A petition for postconviction relief attacking a judgment, regardless of the label placed on it by the petitioner, is considered pursuant to Rule 37.1. See *State v. Wilmoth*, 369 Ark. 346, 350-351, 255 S.W.3d 419, 422 (2007) (citing *Bailey v. State*, 312 Ark. 180, 182, 848 S.W.2d 391, 392 (1993) (per curiam)). Because the trial court previously considered and denied appellant's petition for postconviction relief, he was not entitled to file a subsequent petition. *Porter v. State*, 289 Ark. 475, 712 S.W.2d 304 (1986) (citing *Williams v. State*, 273 Ark. 315, 619 S.W.2d 628 (1981) (per curiam)).

Because it is clear that appellant was not entitled to relief under the petition filed, it is clear that he cannot prevail on appeal. Accordingly, we dismiss the appeal and the motion is moot.

Appeal dismissed; motion moot.