Cite as 2009 Ark. 362 (unpublished)

ARKANSAS SUPREME COURT

No. CR 08-950

	Opinion Delivered June 18, 2009
JEFFERY D. MORGAN Appellant v. STATE OF ARKANSAS Appellee	PRO SE APPEAL FROM THE CIRCUIT COURT OF MILLER COUNTY, CR 2002-463, HON. JOE E. GRIFFIN, JUDGE AFFIRMED.

PER CURIAM

In 2003, appellant Jeffery D. Morgan was found guilty by a jury of kidnapping and second-degree battery. He was sentenced as a habitual offender to an aggregate term of life imprisonment. We affirmed. *Morgan v. State*, 359 Ark. 168, 195 S.W.3d 889 (2004).

Subsequently, appellant unsuccessfully sought postconviction relief in a petition pursuant to Arkansas Rule of Criminal Procedure 37.1. *Morgan v. State*, CR 05-1163 (Ark. Jan. 5, 2006) (per curiam). In 2008, appellant filed in the trial court a pro se motion for a copy or use of the transcript from his criminal trial. The trial court denied the motion, and appellant has lodged a pro se appeal here from the order.

In Points I and II on appeal, which are virtually indistinguishable, appellant maintains that the trial court erred when it denied appellant's motion and when it precluded appellant's obtaining a copy of the transcript. In the motion and on appeal, appellant contends that he

is indigent and has need for a copy of the transcript in order to complete a petition for writ of habeas corpus and abstract the record from the underlying criminal trial.

Indigency alone does not entitle a petitioner to free photocopying. *Washington v. State*, 270 Ark. 840, 606 S.W.2d 365 (1980) (per curiam). In Points I and II of the appeal brief, appellant admits as much where Arkansas law is concerned. He instead relies upon federal case law, including decisions made by the United States Supreme Court, to support his claim. That reliance is misplaced. Federal case law is not paramount to Arkansas statutes, case law and procedural rules when an Arkansas remedy is at issue. *E.g.*, *Griffin v. State*, 347 Ark. 788, 67 S.W.3d 582 (2002). As Arkansas law controls, appellant is not entitled to copies of the trial transcript at public expense based solely upon his status as an indigent.

Also, a petitioner is not entitled to a free copy of material on file with this court unless he or she demonstrates some compelling need for certain documentary evidence to support an allegation contained in a timely petition for postconviction relief. *Austin v. State*, 287 Ark. 256, 697 S.W.2d 914 (1985) (per curiam). Here, appellant fails to demonstrate such a compelling need.

As set out in appellant's pleadings, he intends to argue in the habeas petition that trial counsel was ineffective and had a conflict of interest while representing appellant. However, appellant is precluded from raising ineffectiveness claims, including one based upon a conflict of interest, in a habeas petition. Claims of ineffective assistance of counsel are properly brought in a petition pursuant to Rule 37.1. Ark. R. Crim. P. 37.1(a)(iv). And, a habeas

corpus proceeding is not a substitute for postconviction relief under Rule 37.1. *Friend v. Norris*, 364 Ark. 315, 219 S.W.3d 123 (2005).

Moreover, under our postconviction rules, a petition for postconviction relief attacking a judgment is considered pursuant to Rule 37.1, regardless of the label given it by the petitioner. *State v. Wilmoth*, 369 Ark. 346, 255 S.W.3d 419 (2007). Here, appellant's proposed petition for writ of habeas corpus based upon ineffective assistance and conflict of interest would properly be considered by the trial court as a Rule 37.1 petition. That being the case, all grounds for postconviction relief must be raised in the original petition filed in the trial court, and there may be no subsequent Rule 37.1 petition unless the first petition was denied without prejudice. Ark. R. Crim. P. 37.2(b); *Ruiz v. State*, 280 Ark. 190, 655 S.W.2d 441 (1983) (per curiam). Appellant has not demonstrated that the first Rule 37.1 petition was denied without prejudice, and a subsequent Rule 37.1 petition would be prohibited.

Even if a subsequent petition were allowed, a petition under Rule 37.1 must be filed in the trial court within sixty days of the date that the mandate was issued by the appellate court if an appeal was taken. Ark. R. Crim. P. 37.2(c). Here, the mandate in appellant's direct appeal was issued by our court on November 2, 2004. If allowed to proceed, any future Rule 37.1 petition, regardless of the label placed upon it by appellant, will have been filed more than four years after the mandate was issued. Time limitations imposed in Rule 37.2(c) are jurisdictional in nature, and if they are not met, a trial court lacks jurisdiction to consider a Rule 37.1 petition. *Maxwell v. State*, 298 Ark. 329, 767 S.W.2d 303 (1989).

We do not reverse a denial of postconviction relief unless the trial court's findings are clearly erroneous. *Greene v. State*, 356 Ark. 59, 146 S.W.3d 871 (2004). A finding is clearly erroneous when, although there was evidence to support it, the appellate court after reviewing the entire evidence is left with the definite and firm conviction that a mistake has been committed. *Flores v. State*, 350 Ark. 198, 85 S.W.3d 896 (2002). We find no error on the part of the trial court.

In Point III on appeal, appellant claims that the trial court erred in failing to conduct a hearing on the motion for transcript prior to entering an order of denial, thereby violating appellant's constitutional rights. Appellant presents no valid legal basis to support this argument. We will not consider an argument, even a constitutional one, when the appellant presents no citation to authority or convincing argument in its support, and it is not apparent without further research that the argument is well taken. *Weatherford v. State*, 352 Ark. 324, 101 S.W.3d 227 (2003).

Affirmed.