

SUPREME COURT OF ARKANSAS

No. CR 10-410

WILLIE CLAY SMITH
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered September 30, 2010

PRO SE MOTIONS FOR
APPOINTMENT OF COUNSEL AND
EXTENSION OF TIME TO FILE
APPELLANT'S BRIEF [CIRCUIT
COURT OF PULASKI COUNTY, CR
2007-3368, HON. WILLARD
PROCTOR, JR., JUDGE]

MOTION FOR APPOINTMENT OF
COUNSEL DENIED; MOTION FOR
EXTENSION OF TIME TO FILE
APPELLANT'S BRIEF GRANTED
(FINAL EXTENSION).

PER CURIAM

In 2008, appellant Willie Clay Smith was found guilty by a jury of theft of property and sentenced as a habitual offender to a term of 300 months' imprisonment. The Arkansas Court of Appeals affirmed. *Smith v. State*, 2009 Ark. App. 151 (unpublished).

Appellant subsequently filed in the trial court a timely verified pro se petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2009). A hearing was held on the petition, and it was denied. Appellant has lodged an appeal from the order in this court and now seeks appointment of counsel to represent him on appeal and an extension of time to file his brief-in-chief.

This is the second motion for appointment of counsel and the second motion for extension of brief time filed by appellant in this appeal. We denied the first motion for

appointment of counsel and granted appellant an additional forty days to file his brief. *Smith v. State*, 2010 Ark. 302 (per curiam).

Appellant urges this court to appoint counsel on the grounds that he lacks the ability to prepare a brief. The claim is not sufficient cause to grant the motion. Postconviction matters, such as petitions pursuant to Arkansas Rule of Criminal Procedure 37.1, are considered civil in nature, and there is no absolute right to appointment of counsel in postconviction or civil matters. *Rogers v. State*, 2010 Ark. 46 (per curiam); see *Virgin v. Lockhart*, 288 Ark. 92, 702 S.W.2d 9 (1986) (per curiam). Nevertheless, we have held that if an appellant makes a substantial showing that he is entitled to relief in a postconviction appeal and that he cannot proceed without counsel, we will appoint counsel. *Rogers*, 2010 Ark. 46; see *Howard v. Lockhart*, 300 Ark. 144, 777 S.W.2d 223 (1989) (per curiam). As the appellant here offers nothing to demonstrate that there is substantial merit to the appeal, he has not met his burden of establishing that he is entitled to appointment of counsel.

The motion for extension of time is granted. As appellant has had a lengthy period of time to submit a brief, no further extensions will be allowed.

Motion for appointment of counsel denied; motion for extension of time to file appellant's brief granted (final extension).