

SUPREME COURT OF ARKANSAS

No. CR 10-851

ERIC L. MURRY
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered September 30, 2010

PRO SE MOTION FOR RULE ON
CLERK [CIRCUIT COURT OF
CRITTENDEN COUNTY, CR 2009-
984, HON. RALPH WILSON, JUDGE]

MOTION FOR RULE ON CLERK
DENIED.

PER CURIAM

On July 27, 2010, an appeal record was tendered to this court in *Eric Murry v. State*, Circuit Court of Crittenden County, CR 2009-984. The pro se notice of appeal filed by petitioner Murry said that the appeal was from an order entered on July 5, 2010. The record did not contain an order entered on that date. The sole order in the record was entered June 23, 2010.

As there was no order that corresponded to the notice of appeal, petitioner Murry was informed that the clerk had declined to lodge the record. He was also told that, if an order had indeed been entered on July 5, 2010, he should tender a certified copy of it, and the appeal would be lodged.

On August 16, 2010, petitioner filed the instant motion for rule on clerk in which he states that the notice of appeal should have designated the June 23, 2010 order. He asks that the appeal be lodged from that order. As the notice of appeal was timely as to the June 23,

2010 order, we treat the motion as a motion pursuant to Arkansas Supreme Court Rule 2-2(b) (2010) to perfect the appeal.

We need not consider petitioner's grounds for rule on clerk because it is clear from the record that he could not prevail on appeal if the motion were granted and he were permitted to proceed with an appeal of the June 23, 2010 order. When an appeal is not a direct appeal of a judgment of conviction in a criminal case, an appeal from an order will not be permitted to go forward where it is clear that the appellant could not prevail. *See Tillman*, 2010 Ark. 103; *see also Pierce v. State*, 2009 Ark. 606 (per curiam); *Grissom v. State*, 2009 Ark. 557 (per curiam); *see also Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (per curiam); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (per curiam).

On March 17, 2010, petitioner filed in CR 2009-984 a pro se petition to quash the Information in the case. In the June 23, 2010 order, the court denied the petition on the ground that it was moot because the case had been nolle prossed on November 30, 2009. As prosecution was not being pursued in the matter, the petition filed to quash the Information was indeed moot, and the trial court did not err in declaring it so.

Motion for rule on clerk denied.