

SUPREME COURT OF ARKANSAS

No. CR 10-549

JESUS TAPIA
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered October 28, 2010

PRO SE MOTIONS FOR EXTENSION
OF TIME TO FILE BRIEF AND FOR
ACCESS TO RECORD [CIRCUIT
COURT OF SEVIER COUNTY, CR
2008-22, HON. CHARLES A.
YEARGAN, JUDGE]

APPEAL DISMISSED; MOTIONS
MOOT.

PER CURIAM

In 2008, a jury found appellant Jesus Tapia guilty of rape and kidnapping and sentenced him to an aggregate term of 600 months' imprisonment in the Arkansas Department of Correction. The Arkansas Court of Appeals affirmed. *Tapia v. State*, 2010 Ark. App. 124. On March 22, 2010, appellant filed in the trial court a timely, verified petition for postconviction relief under Arkansas Rule of Criminal Procedure 37.1 (2010) that was denied by order entered March 29, 2010. Appellant lodged an appeal in this court and has filed pro se motions for extension of time to file his brief and for access to the record.

We need not consider the motions as we dismiss the appeal. An appeal from an order that denied a petition for a postconviction remedy will not be permitted to go forward where it is clear that the appellant could not prevail. *Croft v. State*, 2010 Ark. 83 (per curiam); *Crain v. State*, 2009 Ark. 512 (per curiam). Here it is clear that appellant cannot prevail because his petition for postconviction relief failed to state grounds for relief.

In the petition, appellant set forth the same claims as both ineffective assistance and as actual or constructive denial of counsel. He first claimed that his trial attorney would not listen to him or try to assist him. He also claimed that another attorney was appointed to represent him, but that this attorney told him that she did not represent him and referred him to the attorney who represented appellant on appeal. As for his appellate attorney, appellant alleged “very poor conduct,” that counsel refused to meet with appellant, and that counsel “denied repeated phone calls.”

Actual ineffectiveness claims alleging deficiency in attorney performance are subject to a general requirement that the defendant affirmatively prove prejudice. *Robertson v. State*, 2010 Ark. 300, 367 S.W.3d 538 (per curiam). There is a strong presumption that trial counsel’s conduct falls within the wide range of reasonable professional assistance. *Id.* The burden is entirely on the claimant to provide facts that affirmatively support his or her claims of prejudice; neither conclusory statements nor allegations without factual substantiation are sufficient to overcome the presumption, and they cannot form the basis of postconviction relief. *Watkins v. State*, 2010 Ark. 156, 362 S.W.3d 910 (per curiam). General assertions that counsel did not meet with the defendant enough or did not aggressively prepare for trial are not sufficient to establish an ineffective assistance of counsel claim. *Goldsmith v. State*, 2010 Ark. 158 (per curiam); *Polivka v. State*, 2010 Ark. 152, 362 S.W.3d 918.

Appellant’s general, conclusory allegations did not establish a claim for constructive denial of counsel. The petition contained no facts to support the claim. The record and the

docket for the court of appeals confirms that appellant was represented by two of the attorneys that he named. He does not assert that counsel was not present during any particular stage in the proceedings. He alleges no specific omissions by counsel that would serve as a complete failure to subject the prosecution's case to testing. Indeed, the opinion on direct appeal notes that counsel challenged the sufficiency of the evidence by motion for directed verdict and the introduction of appellant's confession through a motion to suppress. Appellant did not allege circumstances that would have prevented competent counsel from rendering assistance. In sum, he failed to provide any factual basis for a claim of actual or constructive denial of counsel. *See Shaw v. State*, 2010 Ark. 112 (per curiam) (citing *Bell v. Cone*, 535 U.S. 685 (2002)).

Appellant's petition provided no facts sufficient to support the grounds alleged. This court will affirm a denial of postconviction relief where the record conclusively shows that the petition did not state allegations to warrant relief and was without merit. *See Polivka*, 2010 Ark. 152, 362 S.W.3d 918; *Shaw*, 2010 Ark. 112. Because appellant's petition was without merit, he cannot prevail on appeal.

Appeal dismissed; motions moot.