

SUPREME COURT OF ARKANSAS

No. CR 10-638

STATE OF ARKANSAS

Appellant

v.

KENNETH HARRISON

Appellee

Opinion Delivered January 27, 2011

PRO SE MOTION FOR ACCESS TO THE RECORD, FOR EXTENSION OF TIME TO FILE BRIEF, AND TO PROCEED IN FORMA PAUPERIS [PULASKI COUNTY CIRCUIT COURT, CR 06-149, HON. MARION A. HUMPHREY, JUDGE]

MOTION FOR ACCESS TO THE RECORD AND FIRST MOTION FOR EXTENSION OF TIME TO FILE BRIEF GRANTED; SECOND MOTION FOR EXTENSION OF TIME AND MOTION TO PROCEED IN FORMA PAUPERIS MOOT.

PER CURIAM

Following a jury trial, appellee Kenneth Harrison was found guilty of capital murder, and a mandatory sentence of life imprisonment without the possibility of parole was imposed. This court affirmed. *Harrison v. State*, 371 Ark. 652, 269 S.W.3d 321 (2007). Appellee subsequently filed in the trial court a petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2010), in which he alleged several grounds for relief.

A hearing was held on the petition, and the trial court found that trial counsel's failure to investigate the juvenile conviction for capital murder of a State witness, Shuntae Ingram, amounted to ineffective assistance of counsel. The trial court therefore vacated and set aside

appellee's conviction and sentence, and a new trial was ordered. The State of Arkansas appealed, the appellant's brief has been filed, and the appeal is pending.

Now before us are four pro se motions filed by appellee. Appellee's first motion is styled as a "motion to compel lower court to produce transcript and records" of appellee's Rule 37.1 hearing. Inasmuch as the transcript of that hearing is part of the record lodged in this court on appeal, we treat appellee's motion as one for access to the record. Furthermore, because appellee is proceeding pro se and access to the record is necessary in order to prepare his brief, we grant his request. See *Houston v. State*, 2009 Ark. 422 (per curiam). Our clerk is directed to provide appellant with a copy of the record, which must be returned to this court when the brief is tendered or the brief will not be filed. *Id.*

The next two motions are requests for an extension of time in which to file appellee's brief. This is the first such request made by appellee, and we grant the request as to appellee's first motion. His brief is due no later than thirty days from the date of this opinion. Appellee's second motion for extension of time is accordingly moot. We note that, once a motion for extension of time to file a brief has been filed in this court, the time-period for filing the brief is tolled until this court acts on the motion; a subsequent motion for extension of time filed while the first motion remains pending is unnecessary.

Appellee's final motion is a motion to proceed in forma pauperis, which appellee apparently filed under the assumption that he would bear the cost of copying the transcript of his Rule 37.1 hearing. However, as we treated his motion as one for access to the record rather than one for photocopying at public expense, appellant's motion is moot.

Cite as 2011 Ark. 29

Motion for access to the record and first motion for extension of time to file brief granted; second motion for extension of time to file brief and motion to proceed in forma pauperis moot.