

SUPREME COURT OF ARKANSAS

No. CR 11-98

NATHAN GILCREASE
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered March 10, 2011

PRO SE MOTION FOR EXTENSION
OF TIME TO FILE BRIEF [PULASKI
COUNTY CIRCUIT COURT, CR 2007-
1710, HON. MARION A. HUMPHREY,
JUDGE]

APPEAL DISMISSED; MOTION
MOOT.

PER CURIAM

A Pulaski County jury sentenced appellant Nathan Gilcrease to serve an aggregate sentence of life without parole following his conviction on two counts of capital murder and two counts of kidnapping. This court affirmed the judgment. *Gilcrease v. State*, 2009 Ark. 298, 318 S.W.3d 70. Appellant filed in the trial court a petition for postconviction relief under Arkansas Rule of Criminal Procedure 37.1 (2010) that was denied. He has lodged an appeal of the order in this court, and he now brings the pending motion for an extension of time in which to file his brief. Because the petition for Rule 37.1 relief was not properly verified, we dismiss the appeal, and the motion is therefore moot.

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). Rule 37.1(c) requires a petition to be accompanied by an appropriate affidavit. Ark. R. Crim. P. 37.1(c); see *Smith v. State*, 2010

Ark. 122 (per curiam). Here, the petition did not include an affidavit in the form required by Rule 37.1(c).

The verification requirement for a postconviction-relief petition is of substantive importance to prevent perjury. *Smith*, 2010 Ark. 122 (citing *Shaw v. State*, 363 Ark. 156, 211 S.W.3d 506 (2005) (per curiam)). Where a petition is not verified and where there is not explicit leave from the trial court for petitioner to file an unverified petition, a trial court shall dismiss the petition without consideration of the issues contained in the petition. *Sparacio v. State*, 2010 Ark. 335 (per curiam). The circuit court shall not accept for filing, and must dismiss, a petition that is not verified as required by Rule 37.1(c). Ark. R. Crim. P. 37.1(d); *Smith*, 2010 Ark. 122; *see Waters v. State*, 2009 Ark. 530 (per curiam). Under Rule 37.1(d), any appellate court is also required to dismiss an appeal where the petition failed to comply with Rule 37.1(c). *Riley v. State*, 2010 Ark. 347 (per curiam); *see also Cogshell v. State*, 2010 Ark. 378 (per curiam).

The record does not indicate that the trial court granted leave to file an unverified petition. The body of the petition included a reference to a declaration under penalty, but no affidavit was attached. The appeal is dismissed and the motion moot.

Appeal dismissed; motion moot.