

SUPREME COURT OF ARKANSAS

No. CR 09-1036

WENDELL LEE ROGERS
APPELLANT

v.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered January 28, 2010

PRO SE MOTIONS FOR
APPOINTMENT OF COUNSEL AND
FOR EXTENSION OF TIME TO FILE
BRIEF [CIRCUIT COURT OF UNION
COUNTY, CR 2005-531]

MOTION FOR APPOINTMENT OF
COUNSEL DENIED; MOTION FOR
EXTENSION OF TIME TO FILE BRIEF
GRANTED IN PART AND DENIED IN
PART.

PER CURIAM

In 2006, appellant Wendell Lee Rogers was found guilty by a jury of aggravated robbery and the firearm-enhancement conditions under Arkansas Code Annotated § 16-90-120 (Repl. 2006) and sentenced to an aggregate term of 540 months' imprisonment. Appellant was granted leave by this court to proceed with a belated appeal of the judgment. *Rogers v. State*, CR 08-225 (Ark. May 22, 2008) (per curiam). The Arkansas Court of Appeals subsequently affirmed the judgment. *Rogers v. State*, 2009 Ark. App. 406 (unpublished).

In 2009, appellant timely filed in the trial court a verified pro se petition for postconviction relief under Arkansas Rule of Criminal Procedure 37.1 (2009) that was denied



Cite as 2010 Ark. 46

without a hearing.¹ Appellant has lodged an appeal in this court. In the instant motions, he seeks an extension of time to file his brief-in-chief and appointment of counsel.

With respect to the motion for appointment of counsel, 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. 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. 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.

As to the motion for extension of time to file the appellant's brief, we grant the motion but not for the ninety days appellant requests. The appellant's brief will be due here no later than forty days from the date of this opinion.

Motion for appointment of counsel denied; motion for extension of time to file brief granted in part and denied in part.

BROWN, J., not participating.

¹We note that the Rule 37.1 petition filed in the trial court did not conform to Rule 37.1(b) in that the number of lines per page exceeded the limit set by the rule. As the court ruled on the merits of the petition, it may be assumed that the court tacitly granted appellant leave to proceed with a nonconforming petition. As the court has jurisdiction to consider a petition with more lines per page than allowed by the rule, the court had discretion to rule on the nonconforming petition.