

**SUPREME COURT OF ARKANSAS**

No. CR09-1308

MICHAEL GOLDSMITH  
APPELLANT

V.

STATE OF ARKANSAS  
APPELLEE

**Opinion Delivered** April 1, 2010

PRO SE MOTION FOR COPY OF  
RECORD ON APPEAL AND  
EXTENSION OF TIME TO FILE  
APPELLANT'S BRIEF [CIRCUIT  
COURT OF UNION COUNTY, CR  
2008-280, HON. HAMILTON H.  
SINGLETON, JUDGE]

APPEAL DISMISSED; MOTION  
MOOT.

**PER CURIAM**

A judgment entered on December 10, 2008, reflects that appellant Michael Goldsmith entered a negotiated plea of guilty to robbery and was sentenced to 480 months' incarceration in the Arkansas Department of Correction. Appellant has lodged in this court an appeal of an order by the trial court denying postconviction relief on a petition under Arkansas Rule of Criminal Procedure 37.1 (2009) filed on December 5, 2008.<sup>1</sup> He brings this motion in which he seeks a copy of the record on appeal and an extension of time in which to file his

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<sup>1</sup> The petition appears to have been timely filed. The judgment indicates that the proceedings were had on October 23, 2008, and the judgment was not filed until December 10. Although the appealed order finds that the plea was entered on November 5, 2008, the December filing of the Rule 37.1 petition would have been within ninety days of the date that the sentence was pronounced in either case. Where the judgment was not entered within ten days of the date the sentence was pronounced, the ninety-day period in which to file a Rule 37.1 petition begins to run on the date that the sentence was pronounced. Ark. R. Crim. P. 37.2(c) (2009).



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brief. Because it is clear that appellant cannot prevail, we dismiss the appeal and the motion is moot.

This court has consistently held that an appeal of the denial of postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *French v. State*, 2009 Ark. 443 (per curiam) (citing *Bunch v. State*, 370 Ark. 113, 257 S.W.3d 533 (2007) (per curiam)). Appellant's Rule 37.1 petition failed to set out claims sufficient to sustain relief, and it is therefore clear that he cannot prevail on appeal.

In the petition, appellant asserted that the public defender assigned to represent him had a heavy caseload and did not focus on appellant's case or keep appellant informed, that counsel did not perform sufficient research or challenge evidence, and that the evidence against appellant was insufficient and his confession was coerced. Appellant alleged that counsel misled him, providing what appellant asserted was inaccurate information concerning the potential sentence range for a plea offer. Appellant complained that counsel did not discuss any plea offer with him until what was apparently the last possible date for acceptance of an offer.

When a defendant pleads guilty, the only claims cognizable in a proceeding under Rule 37.1 are those that alleged that the plea was not made voluntarily and intelligently or was entered without effective assistance of counsel. *Jamett v. State*, 2010 Ark. 28, 358 S.W.3d 847 (per curiam). Where the judgment was based on a guilty plea, a petitioner claiming ineffective assistance of counsel must demonstrate prejudice by showing that there was a



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reasonable probability that, but for counsel's alleged error, he would not have pled guilty and would have insisted on going to trial. *French*, 2009 Ark. 443, at 3. An appellant who has pled guilty normally will have considerable difficulty in proving any prejudice as the plea rests upon an admission in open court that the appellant did the act charged. *Jamett*, 2010 Ark. 28, at 4, 358 S.W.3d at 877.

The claims in the petition that challenged the evidence were not within the limited categories cognizable in a proceeding under Rule 37.1. Appellant did not assert that his plea was not made voluntarily and intelligently, and, as the order denying postconviction relief noted, appellant had a number of previous convictions and was not a stranger to the criminal justice system. Of those claims in the petition that alleged ineffective assistance of counsel, none demonstrated the requisite prejudice. 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. *Thompson v. State*, 307 Ark. 492, 821 S.W.2d 37 (1991). Although appellant asserted that counsel misled him, he did not plead facts that would support such a claim. Counsel is presumed effective, and allegations without factual substantiation are insufficient to overcome that presumption. *Nelson v. State*, 344 Ark. 407, 39 S.W.3d 791 (2001) (per curiam).

Because the petition did not include any claim sufficient to support relief, the trial court did not err in denying postconviction relief, and it is clear that appellant cannot prevail on appeal. Accordingly, we dismiss the appeal and the motion is moot.

Appeal dismissed; motion moot.