

SUPREME COURT OF ARKANSAS

No. CR 10-252

WOODRUFF T. SPARACIO
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered September 16, 2010

PRO SE MOTIONS FOR BELATED APPEAL AND FOR WRIT OF CERTIORARI TO COMPLETE THE RECORD [CIRCUIT COURT OF CRAWFORD COUNTY, CR 2005-457, HON. GARY R. COTTRELL, JUDGE]

MOTION FOR BELATED APPEAL DENIED; MOTION FOR WRIT OF CERTIORARI MOOT.

PER CURIAM

In 2005, petitioner Woodruff T. Sparacio was found guilty by a jury of two counts of rape and was sentenced by the court to 480 months' imprisonment in the Arkansas Department of Correction on each count, those sentences to run concurrently. The Arkansas Court of Appeals affirmed. *Sparacio v. State*, CACR 07-1025 (Ark. App. Apr. 29, 2009) (unpublished). Petitioner through retained counsel filed an unverified petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2010), which was denied by the trial court after a hearing. The trial court order denying relief on the petition was entered on August 10, 2009.

Petitioner filed a notice of appeal in the Crawford County Circuit Clerk's office on September 10, 2009, thirty-one days after the trial court's order was entered. When the record on appeal was tendered to this court on March 9, 2010, our clerk declined to lodge

it as untimely, as petitioner was required to file his notice of appeal in the circuit clerk's office within thirty days of the entry of the trial court's order. Ark. R. App. P.—Crim. 2(a)(4) (2010). Now before us are petitioner's motions for belated appeal and for writ of certiorari to complete the record.

Petitioner alleges that the Crawford County Circuit Clerk's office did not promptly send him a copy of the court's order denying relief, as required by Arkansas Rule of Criminal Procedure 37.3(d), and that, under *Porter v. State*, 287 Ark. 359, 698 S.W.2d 801 (1985), such failure entitles petitioner to pursue a belated appeal. However, because it is clear that petitioner could not prevail on his appeal, we deny petitioner's motion for belated appeal, and his motion for writ of certiorari is moot.

An appeal from an order that denied a petition for postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *Watkins v. State*, 2010 Ark. 156 (per curiam) (citing *Pierce v. State*, 2009 Ark. 606 (per curiam)). Arkansas Rule of Criminal Procedure 37.1(d) provides that a petitioner in custody under sentence of a circuit court claiming a right to be released, or to have a new trial, or to have the original sentence modified on the ground that the sentence is subject to collateral attack, may file a *verified* petition in the court which imposed the sentence. *Shaw v. State*, 363 Ark. 156, 211 S.W.3d 506 (2005); see Ark. R. Crim. P. 37.1(d). Rule 37.1(c) dictates the form and substance of an affidavit of verification, noting that it must be signed by the petitioner. Subsection (e) of Rule 37.1 further provides that petitions which are not in compliance with the rule will not

be filed without leave of the court.

In the instant case, the original Rule 37.1 petition filed on petitioner's behalf by his retained counsel contained only the reproduced signature of counsel and lacked any signature whatsoever from petitioner. Nor did petitioner sign a verification affidavit, as there was no such affidavit appended to the petition. The docket sheet contained in the tendered record does not reflect that the trial court granted leave for trial counsel to file the unverified petition.

This court has explained that the verification requirement for a postconviction-relief petition is of substantive importance to prevent perjury. *Shaw*, 363 Ark. 156, 211 S.W.3d 506. In order for that purpose to be served, the petitioner must execute the verification, and, if the petitioner is represented by counsel, counsel may not sign and verify the petition for him. *See Boyle v. State*, 362 Ark. 248, 208 S.W.3d 134 (2005). 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 therein. *See Bunch v. State*, 370 Ark. 113, 257 S.W.3d 533 (2007).

Where an appeal is filed from the denial of relief on a petition that does not meet the strictures of Rule 37.1(c), the appellant could not prevail if allowed to proceed, and we will dismiss the appeal. *See id.* It follows logically, then, that, if we would dismiss a timely filed appeal due to an original Rule 37.1 petition's lack of verification, we would likewise deny a motion to pursue a belated appeal from such a petition. Petitioner's remaining motion for

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writ of certiorari to complete the record is accordingly moot.

Motion for belated appeal denied; motion for writ of certiorari moot.