

**SUPREME COURT OF ARKANSAS**

No. CR 10-606

KENNETH D. RILEY

PETITIONER

V.

STATE OF ARKANSAS

RESPONDENT

**Opinion Delivered** September 23, 2010

PRO SE MOTION FOR RULE ON  
CLERK [CIRCUIT COURT OF  
MILLER COUNTY, CR 2007-715,  
HON. W. KELVIN WYRICK, JUDGE]

MOTION FOR RULE ON CLERK  
TREATED AS MOTION FOR  
BELATED APPEAL AND DENIED.

---

**PER CURIAM**

In 2008, petitioner Kenneth D. Riley was found guilty by a jury of aggravated robbery and sentenced as a habitual offender to 960 months' imprisonment. The Arkansas Court of Appeals affirmed. *Riley v. State*, 2009 Ark. App. 613, 343 S.W.3d 327.

Subsequently, petitioner timely filed in the trial court a pro se petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2010). The petition was denied on November 30, 2009. Petitioner did not file a timely notice of appeal from the order, and he now seeks leave by means of a pro se motion for rule on clerk to proceed with a belated appeal. As a timely notice of appeal was not filed, we treat the motion as a motion for belated appeal pursuant to Rule 2(e) of the Rules of Appellate Procedure—Criminal (2010). *Gray v. State*, 2010 Ark. 216 (per curiam); *see also Holland v. State*,

Cite as 2010 Ark. 347

358 Ark. 366, 190 S.W.3d 904 (2004) (per curiam) (citing *Johnson v. State*, 342 Ark. 709, 30 S.W.3d 715 (2000) (per curiam)).

We need not consider petitioner's grounds for a belated appeal because it is clear from the record that he could not prevail on appeal if the motion were granted. 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. *Smith v. State*, 2010 Ark. 122 (per curiam); *Tillman v. State*, 2010 Ark. 103; *Pierce v. State*, 2009 Ark. 606 (per curiam); *Grissom v. State*, 2009 Ark. 557 (per curiam); *Crain v. State*, 2009 Ark. 512 (per curiam); see also *Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (per curiam); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (per curiam).

Criminal Procedure Rule 37.1(d) requires that a Rule 37.1 petition be verified. *Nelson v. State*, 363 Ark. 306, 213 S.W.3d 645 (2005) (per curiam). Rule 37.1(c) provides a form of affidavit to be attached to the petition. *Mitchael v. State*, 2009 Ark. 516 (per curiam) (citing *Bunch v. State*, 370 Ark. 113, 257 S.W.3d 533 (2007) (per curiam)). The petition filed by petitioner was not signed by him, and it did not bear the verification required by Rule 37.1(c). The verification requirement for a petition for postconviction relief is of substantive importance to prevent perjury. *Smith*, 2010 Ark. 122; *Shaw v. State*, 363 Ark. 156, 211 S.W.3d 506 (2005) (per curiam). For that purpose to be served, the petitioner must sign the petition and execute the verification. *Boyle v. State*, 362 Ark. 248, 208 S.W.3d 134 (2005) (per

Cite as 2010 Ark. 347

curiam). Petitioner did not meet this requirement of the rule. Under Rule 37.1(d), the circuit court and any appellate court must dismiss a petition that is not verified as required by Rule 37.1(c). *Mitchael*, 2009 Ark. 516, at 2.

Motion for rule on clerk treated as motion for belated appeal and denied.

CORBIN, J., not participating.

No briefs filed.