

SUPREME COURT OF ARKANSAS

No. CR 09-701

MYRON NEWJEAN ANDERSON, JR.
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered October 8, 2009

PRO SE MOTIONS FOR EXTENSION
OF TIME TO FILE APPELLANT'S
BRIEF AND FOR ACCESS TO
RECORD [CIRCUIT COURT OF
ASHLEY COUNTY, CR 2006-197, HON.
DON E. GLOVER, CIRCUIT JUDGE]

APPEAL DISMISSED; MOTIONS
MOOT.

PER CURIAM

In 2007, a jury found appellant Myron Newjean Anderson, Jr., guilty of five counts of commission of a terroristic act and one count of being a felon in possession of firearms. The jury imposed an aggregate sentence of 1320 months' imprisonment in the Arkansas Department of Correction. The Arkansas Court of Appeals affirmed. *Anderson v. State*, CACR 08-458 (Ark. App. Jan. 28, 2009). Appellant timely filed in the trial court a petition for postconviction relief under Arkansas Rule of Criminal Procedure 37.1 that the court denied. Appellant lodged an appeal of the order in this court, and filed motions seeking an extension of time in which to file his brief and access to the record. Appellant has since tendered his brief. Because we dismiss the appeal based upon the record before us, we need not consider appellant's brief and the motions are moot.

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. *Bunch v. State*, 370 Ark. 113, 257 S.W.3d 533 (2007) (per curiam). The trial court's order addressing the petition found that a review of the record indicated that

appellant's claims were without merit. The claims considered included a claim of ineffective assistance and were based upon appellant's assertion that a particular juror was not a part of the jury panel and had not been properly seated. It is apparent that the trial court correctly determined the claims to be without merit.

Appellant had filed, along with his petition under Rule 37.1, a motion to file an overlength petition and additional pages following the petition that contained additional claims. The trial court did not indicate that permission was granted for the overlength petition including the additional claims and did not address claims raised outside of the compliant petition.¹ The trial court did not appear to consider the additional materials outside of the petition relating to the claims addressed. Even if the additional materials were considered, however, appellant clearly could not prevail on appeal.

Appellant claimed in the petition that trial counsel was ineffective for failure to object to seating of the juror and that his constitutional rights were violated because the juror was not properly seated. Although appellant attempted to frame the constitutional issues as claims of an insufficient number of jurors, the claims actually concerned the qualifications of the particular juror to serve. Such a claim is a direct attack on the verdict and not a cognizable claim in a Rule 37.1 proceeding. *See Howard v. State*, 367 Ark. 18, 238 S.W.3d 24 (2006); *Cigainero v. State*, 321 Ark. 533, 906 S.W.2d 282 (1995).

In addition, appellant's statements concerning the facts as to the seating of the juror are not consistent with the record. Appellant alleged that the juror, when his name was called, was not a part of the selected group or positioned as the court had previously requested and appears to have asserted

¹An appellant has an obligation to obtain a ruling on any issue to be preserved for appeal. *See Howard v. State*, 367 Ark. 18, 238 S.W.3d 24 (2006); *Beshears v. State*, 340 Ark. 70, 8 S.W.3d 32 (2000). We therefore need only address the issues upon which the trial court provided a ruling, whether or not the trial court considered the additional materials.

that the juror was therefore incorrectly identified as a part of the selected group. The record, however, clearly indicates that the juror was included in the initial panel of prospective jurors and that the court and the attorneys had conducted individual voir dire of certain jurors, including the juror at issue, and would have been aware of the juror's identity. The record indicates other strikes that were exercised, and that the juror ultimately was included within the final group of prospective jurors that was selected to serve on the jury.

Counsel is not ineffective for failing to make an argument that is meritless. *Camargo v. State*, 346 Ark. 118, 55 S.W.3d 255 (2001). Because appellant did not state a meritorious basis upon which counsel could have objected to the seating of the juror and the record clearly supports the juror's selection, appellant's claim as to ineffective assistance on that basis fails as well.

In the filed materials that the trial court may or may not have considered, appellant raised additional claims that the juror did not fully disclose his relationship with a victim in the case. But, the juror did disclose the relationship, indicating that it was not a close one, and the court indicated satisfaction with the juror's responses to the questions posed. Appellant did not allege that counsel had knowledge of any actual bias or perjury, or state any facts indicating that the decision not to challenge the juror was anything other than a poor tactical choice. This court will not label counsel ineffective merely because of possible bad tactics or strategy in selecting a jury. *Echols v. State*, 354 Ark. 530, 556, 127 S.W.3d 486, 502 (2003).

This court does not reverse a denial of postconviction relief unless the trial court's findings are clearly erroneous or clearly against the preponderance of the evidence. *Gaye v. State*, 209 Ark. 201. A finding is clearly erroneous when, although there is evidence to support it, the appellate court, after reviewing the entire evidence, is left with the definite and firm conviction that a mistake has been

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committed. *Small v. State*, 371 Ark. 244, 264 S.W.3d 512 (2007) (per curiam). In this case, it is clear that the trial court's findings were not clearly erroneous, and that appellant cannot prevail.

Appeal dismissed; motions moot.