

SUPREME COURT OF ARKANSAS

No. CR 09-716

TEDDY LEE CLARKS
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered October 8, 2009

PRO SE MOTIONS FOR APPOINTMENT OF COUNSEL, FOR EXTENSION OF TIME TO FILE APPELLANT'S BRIEF, AND TO SUBPOENA DNA SAMPLE [CIRCUIT COURT OF PULASKI COUNTY, CR 2006-4245, HON. HERBERT T. WRIGHT, JR., JUDGE]

MOTION FOR COUNSEL DENIED; MOTION FOR EXTENSION OF TIME GRANTED; MOTION TO SUBPOENA TREATED AS MOTION TO SUPPLEMENT RECORD AND DENIED.

PER CURIAM

In 2007, a jury found appellant Teddy Lee Clarks guilty of two counts of rape and sentenced him to an aggregate term of 480 months' imprisonment. The Arkansas Court of Appeals affirmed. *Clarks v. State*, CACR 07-1041 (Ark. App. Sept. 10, 2008). Appellant timely filed in the trial court a petition for relief under Arkansas Rule of Criminal Procedure 37.1 that was denied. He has lodged an appeal of the order denying postconviction relief in this court and has now filed pro se motions for appointment of counsel, for an extension of time in which to file his brief, and to subpoena a DNA sample from the Arkansas Department of Correction.

In appellant's motion for counsel, he asserts that he is proceeding pro se, that he cannot afford counsel and is indigent, that the issues are complex, that he has limited knowledge of the law and access

to research materials, that his skills are limited, and that justice would best be served if an attorney were appointed to represent him. Appellant does not address the merits of his claims.

The fact that an appellant is indigent and unskilled, without more, does not provide a basis for appointing counsel. *Viveros v. State*, 372 Ark. 463, 277 S.W.3d 223 (2008) (per curiam). There is no constitutional right to an attorney in state postconviction proceedings. *Id.* Even so, this court has 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. *Id.*; see also *Howard v. Lockhart*, 300 Ark. 144, 777 S.W.2d 223 (1989) (per curiam). Appellant makes no statement as to the merit of the appeal and therefore does not demonstrate that he is entitled to relief or that counsel should be appointed for this appeal. Accordingly, the motion for appointment of counsel is denied.

In his motion for extension of time, appellant asserts that his incarceration has limited his access to materials to research the issues and that he required the transcript to proceed. Appellant's request for an extension of time to file the appellant's brief is the first such request by appellant in this appeal. We grant the motion. The appellant's brief is due here no later than thirty days from the date of this opinion.

In his final motion, appellant requests this court to order a DNA sample taken for analysis and comparison. We treat the motion as one to supplement the record and deny it. This court has long and consistently held that it cannot, in the exercise of its appellate jurisdiction, receive testimony or consider anything outside of the record below. *Hudson v. Kyle*, 365 Ark. 341, 229 S.W.3d 890 (2006); see also *Clark v. Pine Bluff Civil Serv. Comm'n*, 353 Ark. 810, 120 S.W.3d 541 (2003); *Miles v. State*, 350 Ark. 243, 85 S.W.3d 907 (2002); *Boswell, Tucker & Brewster v. Shirron*, 324 Ark. 276, 921 S.W.2d 580 (1996); *McLeod v. Mabry*, 206 Ark. 618, 177 S.W.2d 46 (1944).

Cite as 2009 Ark. 495

Motion for counsel denied; motion for extension of time granted; motion to subpoena treated as motion to supplement record and denied.