

Cite as 2018 Ark. App. 248

ARKANSAS COURT OF APPEALS

DIVISION III

No. CR-17-848

KIRK DAVID HALCOMB

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered: April 11, 2018

APPEAL FROM THE ASHLEY
COUNTY CIRCUIT COURT
[NO. 02CR-10-145]

HONORABLE ROBERT BYNUM
GIBSON, JR., JUDGE

DISMISSED

WAYMOND M. BROWN, Judge

Appellant Kirk Halcomb appeals from the order of the Ashley County Circuit Court denying his pro se petition for Rule 37 postconviction relief. Because he is no longer incarcerated, we dismiss the appeal.

Postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 is available to a “petitioner in custody under sentence of a circuit court.” For purposes of Rule 37 relief, “in custody” has been construed to mean physically incarcerated. *See Criswell v. State*, 2014 Ark. 205; *Branning v. State*, 2010 Ark. 401; *Bohanan v. State*, 336 Ark. 367, 985 S.W.2d 708 (1999).

On March 5, 2018, appellant filed a change of address with the clerk of the court stating, “Appellant has served his 2 yr sentence and has been released from the Delta Unit in Dermott, Ar.” Because appellant has been released from physical custody, Rule 37.1

postconviction relief is no longer available to him, as the granting of relief would have no practical effect. *See Criswell, supra.*

Dismissed.

GLADWIN and MURPHY, JJ., agree.

Kirk David Halcomb, pro se appellant.

Leslie Rutledge, Att'y Gen., by: *Brooke Jackson Gasaway*, Ass't Att'y Gen., for appellee.