

Cite as 2018 Ark. App. 501

ARKANSAS COURT OF APPEALS

DIVISION II

No. CR-18-44

DAMEION WILLIAMS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered: October 17, 2018

APPEAL FROM THE POPE COUNTY
CIRCUIT COURT
[NO. 58CR-14-432]

HONORABLE WILLIAM M.
PEARSON, JUDGE

REBRIEFING ORDERED

WAYMOND M. BROWN, Judge

Appellant Dameion Williams appeals from the order of the Pope County Circuit Court denying his petition for Rule 37 postconviction relief. Finding Williams’s abstract to be deficient, we order rebriefing.

Williams was convicted by a jury of aggravated robbery, attempted murder in the first degree, and battery in the first degree. He was sentenced to an aggregate term of 35 years’ incarceration in the Arkansas Department of Correction. His conviction and sentence were affirmed by this court in *Williams v. State*, 2017 Ark. App. 198, 517 S.W.3d 446. Williams then filed a petition for postconviction relief pursuant to Rule 37.1 of the Arkansas Rules of Criminal Procedure (2017), raising various claims of ineffective assistance of counsel. Without holding an evidentiary hearing, the circuit court entered an order with written findings denying his request for postconviction relief.

On appeal, Williams argues that the circuit court erred in not holding an evidentiary hearing on his ineffective-assistance-of-counsel claims. He specifically contends that his counsel was ineffective (1) for failing to adequately prepare for trial, (2) for failing to effectually cross-examine Detective Barker, (3) for failing to obtain a ruling on his proposed jury instruction, and (4) for submitting a subpar appellate brief to this court on direct appeal.

Arkansas Supreme Court Rule 4-2(a)(5) requires an appellant to create an abstract of stenographically reported material that is essential for the appellate court to understand the case and to decide the issues on appeal. Here, although the transcript from the jury trial is lengthy and is comprised of the testimony of ten witnesses, the abstract section of Williams's brief provides only a small portion of one witness's testimony.

The appellate brief submitted by Williams contains a six-page abstract, the first page of which is merely a recitation of the case's procedural history. The next two pages of the abstract provide a portion of the pretrial conference between defense counsel and the court regarding the subpoena of the codefendant in the case who has asserted his Fifth Amendment right against self-incrimination; however, it excludes defense counsel's attempt to distinguish the case at hand from precedent. That unabstracted portion of the pretrial conference goes directly to Williams's contention that his counsel was inadequately prepared for trial. Further, a review of the record and points on appeal reveals that although the remaining three pages of the abstract purports to provide the essence of Detective Barker's testimony, significant and relevant testimony is missing, particularly as it relates to the video and receipt obtained from a local convenience store.

Additionally, an abstract of the trial and testimony of other witnesses, especially that of the victim, is needed in order to evaluate Williams’s claims according to the “cause and prejudice” test set out in *Strickland v. Washington*, 466 U.S. 668 (1984). See *Hubbard v. State*, 334 Ark. 321, 973 S.W.2d 804 (1998).

Due to the deficiencies, we order Williams to file a substituted abstract, brief, and addendum that complies with our rules within fifteen days from the date of this opinion. Ark. Sup. Ct. R. 4-2(b)(3). The deficiencies noted are not to be taken as an exhaustive list. We strongly encourage counsel to review the rules to ensure that no other deficiencies are present.

Rebriefing ordered.

GRUBER, C.J., and WHITEAKER, J., agree.

Omar F. Greene, for appellant.

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