

Cite as 2018 Ark. App. 506

ARKANSAS COURT OF APPEALS

DIVISION III

No. CR-17-1046

KENYON WAYNE TAYLOR
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

OPINION DELIVERED: OCTOBER 24, 2018

APPEAL FROM THE GARLAND
COUNTY CIRCUIT COURT
[NO. 26CR-14-229]

HONORABLE JOHN HOMER
WRIGHT, JUDGE

DISMISSED

ROBERT J. GLADWIN, Judge

A Garland County jury convicted appellant Kenyon Wayne Taylor of first-degree murder with a firearm enhancement and first-degree battery and sentenced him to an aggregate sentence of fifty-five years' imprisonment in the Arkansas Department of Correction. After his conviction was affirmed on direct appeal, appellant filed a timely petition for postconviction relief under Arkansas Rule of Criminal Procedure 37.1 (2017). The circuit court denied appellant's petition by written opinion without conducting an evidentiary hearing, finding as follows:

From a review of the records of this case the Court finds that the allegations made by the Defendant are not supported by or based on the record of this case nor do they constitute a basis for a Rule 37 challenge as they challenge matters of trial strategy and issues which could have been addressed on direct appeal.

Additionally, the Petition fails to comply with the requirements of Rule 37 in that it is substantially over length.

Appellant appeals, claiming error in the denial of his claims by the circuit court. This court reviews a circuit court decision denying postconviction relief for clear error. *E.g.*, *Taylor v. State*, 2015 Ark. 339, at 4, 470 S.W.3d 271, 275. A finding is clearly erroneous when, although there is evidence to support it, this court is left with a definite and firm conviction that a mistake has been committed. *Id.*

Appellant's Rule 37 petition is 112 pages, which far exceeds the ten-page length allowed for petitions under the Rule. Rule 37.1(b) provides as follows, "[t]he petition, whether handwritten or typed, shall be clearly legible, and shall not exceed ten pages of thirty lines per page and fifteen words per line[.]" The rule encompasses the entire petition, not merely the "brief" section. *Washington v. State*, 308 Ark. 322, 322–23, 823 S.W.2d 900, 901 (1992). Exhibits that are attached to a petition are counted against the ten-page limitation. *Id.*

The Arkansas Supreme Court has held that the rule limiting petitions to ten pages is an entirely reasonable restriction on petitioners seeking postconviction relief. *E.g.*, *Adams v. State*, 2013 Ark. 174, 427 S.W.3d 63; *see Davis v. State*, 2010 Ark. 366 (per curiam) (citing *Sanders v. State*, 352 Ark. 16, 98 S.W.3d 35 (2003)). A petitioner under Rule 37.1 may demonstrate that he cannot adequately present his claims to the court in only ten pages and may request to file a petition longer than ten pages, but he may file the over-length petition only with the permission of the circuit court. *See Adams, supra*; *see also Murry v. State*, 2011 Ark. 343 (per curiam) (citing *Rowbottom v. State*, 341 Ark. 33, 13 S.W.3d 904 (2000)). If a petitioner does not receive permission to file an over-length petition, he is obliged to proceed in accordance with our rules. *Murry, supra*; *see also Davis, supra*. If the petitioner

chooses not to do so, he must bear the consequences of his decision to submit an over-length amended petition. *Murry, supra*. Rule 37.1(b) clearly allows a circuit court to dismiss an over-length petition, stating, “The circuit court or appellate court may dismiss any petition that fails to comply with this subsection.” Accordingly, we hold that the circuit court did not abuse its discretion by denying relief on the appellant’s ineffective-assistance claims in his over-length petition.

Dismissed.

VIRDEN and VAUGHT, JJ., agree.

Kenyon Wayne Taylor, pro se appellant.

Leslie Rutledge, Att’y Gen., by: *Rebecca Kane*, Ass’t Att’y Gen., for appellee.