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ARKANSAS COURT OF APPEALS

DIVISION III
No. CR-22-785

CORREY CRAWFORD

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered May 31, 2023

APPEAL FROM THE MISSISSIPPI
COUNTY CIRCUIT COURT,
CHICKASAWBA DISTRICT
[NO. 47BCR-20-148]

HONORABLE KIMBERLY BOLING
BIBB, JUDGE

AFFIRMED

KENNETH S. HIXSON, Judge

Appellant Correy Crawford filed this pro se appeal after the Mississippi County Circuit Court entered an order denying his amended petition for postconviction relief filed pursuant to Arkansas Rule of Criminal Procedure 37.1. Crawford argues on appeal that the circuit court erred in denying his petition for postconviction relief because his trial counsel was ineffective for (1) failing to move for a change of venue; (2) failing to object to confusing jury instructions, which resulted in the jury erroneously convicting appellant of first-degree murder; (3) failing to challenge the State's use of peremptory strikes under *Batson v. Kentucky*, 476 U.S. 79 (1986); (4) failing to object to prosecutorial misconduct; (5) failing to investigate the entirety of the strength of the State's case, being inattentive and unprofessional during trial, and failing to call an expert witness to rebut the State's evidence; (6) failing to test a

firearm that was possessed by the victim's fiancée on the night of the murder; and (7) failing to impeach the State's witnesses. Crawford also argues on appeal that the circuit court erred in denying his Rule 37.1 petition without an evidentiary hearing and erred in denying his request to appoint him counsel in the postconviction proceeding. We affirm.

I. *Background*

Before addressing the allegations of ineffective assistance of counsel, it is necessary to recite the evidence adduced at appellant's trial. Crawford was arrested and charged as an accomplice with one count of capital murder and one count of aggravated robbery. These charges arose from Crawford's involvement in the shooting death of Demarcus Daniels at his Blytheville home in April 2020.

At trial, it was established that DeMarcus Daniels was a local drug dealer who sold from his home. Because of this, he had installed a surveillance-camera system on the exterior of his house. On the night of April 25, 2020, Daniels was at home with his fiancée, Delrico Coleman. Samantha Wells went to the house and bought marijuana from Daniels. As Wells was leaving the house, three men approached. She saw that two of the men were wearing masks, but one was not. While Wells was still walking through the carport, she heard Coleman yell, "Oh, hell no!"; and she heard Daniels say, "Don't do this, chill out, oh no." Then she heard gunshots, and she ran.

After Wells left, Coleman saw two men enter the house. One was wearing a mask and was armed with a long rifle. The other man was not wearing a mask and was armed with a handgun. Coleman was able to recognize the unmasked man as Crawford because he

was a former customer of Daniels and had been to the house before. When Coleman saw the guns, she reached for a 9mm handgun that she had in her purse. The masked man yelled at her to stop, and shots began to fire. Coleman “hit the floor” and lost consciousness. When she awoke, Daniels had been shot and was lying on the floor, unresponsive.

The Blytheville Police Department began an investigation into Daniels’s death. As part of their investigation, they recovered footage from the DVD player connected to the surveillance camera at Daniels’s home. On this footage, they were able to see Crawford, who was not wearing a mask, leading two other men up to Daniels’s house. Crawford was carrying a gun in one hand and made a hand gesture that seemed to indicate he was giving commands to the other two men. Crawford went inside the residence along with another man who was armed with a rifle. The third suspect did not enter the house. Moments after Crawford and the other man entered the house, the video showed glass flying across the screen, the result of someone inside the residence firing a gun through the glass toward the outside. Shortly thereafter, Crawford was the first to run from the scene with the other two men following. The police took screenshots from the footage, at least one of which depicted Crawford standing at the door with a gun in his right hand. The video recording from the surveillance camera, along with these screenshots, were introduced into evidence.

The police investigated further by creating a photographic lineup and by processing the crime scene. In the lineup, Wells was able to identify Crawford as the unmasked man. From the crime scene inside Daniels’s house, investigators recovered fifteen spent shell casings. Eight of the shells had been fired by a 9mm pistol, and seven had been fired by a

.223-caliber rifle. They retrieved a rifle and a 9mm pistol from Daniels's house, both of which belonged to Daniels. The weapons, the shell casings, and Daniels's body were submitted to the Arkansas State Crime Laboratory. The crime lab analyzed the evidence submitted by the Blytheville Police Department. According to the medical examiner, Daniels had been shot eight times, and he died as a result of these injuries. The crime lab conducted firearm and toolmark examinations that revealed Daniels's rifle did not expend any of the rifle shells and that only one of the 9mm shells had come from his pistol.

Crawford testified in his own defense. Crawford testified that he did not know Daniels and that he had been kidnapped at gunpoint by three strangers in an SUV who gave him a fake gun and told him to "get them in the door."

Based on the evidence presented, the jury convicted Crawford of first-degree murder and, with a sentence enhancement for employing a firearm in the commission of a felony, Crawford was sentenced to fifty years in prison. Crawford was not convicted of aggravated robbery.¹

After Crawford's conviction, he appealed to this court, arguing that there was insufficient evidence to convict him of first-degree murder and that the jury erred in rejecting his affirmative defense that he was acting under duress. We affirmed on direct appeal. *Crawford v. State*, 2022 Ark. App. 214 (*Crawford I*). In addressing Crawford's sufficiency

¹Although the sentencing order entered by the circuit court indicates that Crawford was acquitted of aggravated robbery, the record indicates that the verdict form for aggravated robbery was inadvertently omitted from the packet of instructions given to the jury and that no verdict form on aggravated robbery was returned by the jury.

challenge, we stated that under Ark. Code Ann. § 5-10-102(a)(2) (Supp. 2021), a person commits first-degree murder if, with the purpose of causing the death of another person, he or a person acting with him causes the death of another person. *Id.* We held that the evidence showed, at the very least, that Crawford was an accomplice to the person who shot Daniels and that there was sufficient evidence from which the jury could conclude that he was acting with purposeful intent. *Id.* As to the remaining point on appeal, we held that the credibility of witnesses was for the jury and not this court and that the jury clearly did not believe Crawford's kidnapping story. *Id.*

II. *Crawford's Amended Petition for Postconviction Relief*

Following our affirmance on direct appeal, Crawford timely filed a petition for postconviction relief. Crawford subsequently sought leave to amend his petition, which the circuit court granted, and Crawford filed an amended petition for postconviction relief. In his amended petition, Crawford alleged that his counsel was ineffective for (1) failing to move for a change of venue; (2) failing to object to an erroneous jury instruction that prejudiced the defense and resulted in the jury acting beyond its authority in convicting him of first-degree murder; (3) failing to challenge the State's use of peremptory strikes under *Batson v. Kentucky*, 476 U.S. 79; (4) failing to object to prosecutorial misconduct because the investigation was closed after Crawford's arrest; (5) failing to investigate the entirety of the strength of the State's case, being inattentive and unprofessional during trial, and failing to call an expert witness to rebut the State's evidence and expert witness; (6) failing to assert prosecutorial misconduct because the prosecution did not test the firearm that was possessed

by the victim's fiancée on the night of the murder; and (7) failing to impeach the State's witnesses. In his amended petition, Crawford also sought a hearing on his claims and requested the appointment of counsel.

The circuit entered an order denying and dismissing Crawford's amended petition for postconviction relief without a hearing. In its order, the circuit court made these findings:

Petitioner first claims that trial counsel was ineffective for failing to request a change of venue. The jury is presumed unbiased, and the burden is on the petitioner to demonstrate actual bias on the part of the jury. *Neff v. State*, 287 Ark. 88, 91, 696 S.W.2d 736, 738 (1985). Defendant has failed to meet his burden to demonstrate actual bias. Further, whether to seek a change of venue is a matter of trial tactic and is not for debate under Rule 37. *Huls v. State*, 301 Ark. 572, 580, 785 S.W.2d 467, 471 (1990).

Petitioner's second claim involves sufficiency of the evidence to support his first-degree murder conviction. The Arkansas Court of Appeals has addressed this issue in [*Crawford I*]. If an issue has already been decided on appeal, it cannot be reargued under Rule 37. *Nooner v. State*, 339 Ark. 253, 256, 4 S.W.3d 497, 499 (1999).

Petitioner's third claim alleges ineffective assistance of counsel for failing to challenge peremptory strikes. Petitioner makes no citation to the record to support his claim. The burden is on the petitioner to provide facts to support his claims of prejudice. Allegations which are not supported by facts and a showing of some prejudice to the petitioner do not justify postconviction relief. *Urquhart v. State*, 275 Ark. 486, 487, 631 S.W.2d 304, 306 (1982).

Petitioner's fourth claim and sixth claim both involved prosecutorial misconduct. Claims of prosecutorial misconduct are claims that could have been raised at trial and are thus not cognizable under Rule 37.1. *Ortega v. State*, 2017 Ark. 365, 533 S.W.3d 68. Such claims are a direct challenge to the judgment and are not within the scope of Rule 37.1 proceedings. *Wood v. State*, 2015 Ark. 477, 478 S.W.3d 194.

Petitioner's fifth claim alleges ineffective assistance of counsel for inattentiveness, anger, being argumentative and failing to investigate the strength of the State's case. Petitioner cites nothing in the record to support these allegations nor makes a showing of prejudice. Conclusory statements that counsel was ineffective cannot be the basis for postconviction relief. *Joyner v. State*, 2021 Ark. 78, 621 S.W.3d 124. The fifth claim also cites ineffective assistance of counsel for failing to call an expert witness. Petitioner does not offer the name of the expert witness that should have been called, a summary of the admissible testimony of the expert and a demonstration that the outcome would likely have been different if the testimony had been offered as required. *Abernathy v. State*, 2012 Ark. 59, at 4, 386 S.W.3d 477, 482.

Petitioner's seventh and final claim alleges ineffective assistance for failing to impeach some of the State's witnesses. The decision whether to impeach a witness is a matter of trial tactics or strategy. Matters of trial strategy and tactics are not grounds for relief even if proved improvident. *Sims v. State*, 2015 Ark. 363, 472 S.W.3d 107. When a decision by counsel was a matter of trial tactics or strategy, and that decision is supported by reasonable professional judgment, then such a decision is not a proper basis for relief under Rule 37.1 even if the strategy is unsuccessful. See *Lemaster v. State*, 2015 Ark. 167, 459 S.W.3d 802. Here, trial counsel's decision not to replay damning video evidence for the purpose of impeachment is arguably supported by reasonable professional judgment and outside the scope of Rule 37.1.

Therefore, the Court concludes that the petition and the files and records of this case conclusively show that the petitioner is entitled to no relief. Ark. R. Crim. P. 37.3(a). Considering such, petitioner's amended petition is hereby dismissed.

This appeal followed.

III. *Standard of Review*

We do not reverse the denial of postconviction relief unless the circuit court's findings are clearly erroneous. *Conley v. State*, 2014 Ark. 172, 433 S.W.3d 234. A finding is clearly erroneous when, although there is evidence to support it, after reviewing the entire evidence, we are left with the definite and firm conviction that a mistake has been

committed. *Id.* In making a determination on a claim of ineffective assistance of counsel, this court considers the totality of the evidence. *Id.*

Our standard of review also requires that we assess the effectiveness of counsel under the two-prong standard set forth by the Supreme Court of the United States in *Strickland v. Washington*, 466 U.S. 668 (1984). *Conley, supra.* In asserting ineffective assistance of counsel under *Strickland*, the petitioner must first demonstrate that counsel's performance was deficient. *Sartin v. State*, 2012 Ark. 155, 400 S.W.3d 694. This requires a showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the petitioner by the Sixth Amendment to the United States Constitution. *Woods v. State*, 2019 Ark. 62, 567 S.W.3d 494. In other words, the petitioner must show that his counsel's performance fell below an objective standard of reasonableness. *Mancia v. State*, 2015 Ark. 115, 459 S.W.3d 259. Additionally, counsel is allowed great leeway in making strategic and tactical decisions, particularly when deciding not to call a witness. *Johnson v. State*, 2018 Ark. 6, 534 S.W.3d 143. Matters of trial strategy and tactics, even if arguably improvident, fall within the realm of counsel's professional judgment and are not grounds for finding ineffective assistance of counsel. *Id.* A court must indulge in a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. *Woods, supra.* The burden is on the petitioner to overcome this presumption and to identify specific acts and omissions by counsel that could not have been the result of reasoned professional judgment. *Sims v. State*, 2015 Ark. 363, 472 S.W.3d 107. Conclusory statements that counsel was ineffective cannot be the basis for postconviction relief. *Id.*

Second, the petitioner must show that the deficient performance prejudiced the defense, which requires a demonstration that counsel's errors were so serious as to deprive the petitioner of a fair trial. *Conley, supra*. This requires the petitioner to show that there is a reasonable probability that the fact-finder's decision would have been different absent counsel's errors. *Id.* A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. *Id.*

Unless a petitioner makes both *Strickland* showings, it cannot be said that the conviction resulted from a breakdown in the adversarial process that renders the result unreliable. *Id.* We also recognize that "there is no reason for a court deciding an ineffective assistance claim . . . to address both components of the inquiry if the defendant makes an insufficient showing on one." *Anderson v. State*, 2011 Ark. 488, at 3-4, 385 S.W.3d 783, 787 (quoting *Strickland*, 466 U.S. at 697).

IV. *Crawford's Points on Appeal*

A. Failing to Move for a Change of Venue

Crawford first argues on appeal that the circuit court erred in denying his petition because his trial counsel was ineffective for failing to move for a change of venue. Crawford asserts that the victim was a well-known member of Mississippi County and the surrounding communities, both in the public and the underground. Crawford further asserts that this was a high-publicity case in the media in which television news broadcasts slandered him in connection with the murder. Crawford contends that had his counsel requested a change in venue, the outcome of the case would have been different.

The supreme court has held that the jury is presumed unbiased, and the burden is on the petitioner to demonstrate actual bias on the part of the jury. *Neff v. State*, 287 Ark. 88, 696 S.W.2d 736 (1985). In *Shadwick v. State*, 2017 Ark. App. 243, 519 S.W.3d 722, this court stated that the decision whether to seek a change in venue is largely a matter of trial strategy and is therefore not an issue to be debated under Rule 37. The burden is entirely on the claimant to provide facts that affirmatively support his or her claims of prejudice; neither conclusory statements nor allegations without factual substantiation are sufficient to overcome the presumption that counsel was effective. *Shadwick, supra*. Moreover, in *Montgomery v. State*, 367 Ark. 485, 241 S.W.3d 753 (2006), the supreme court held that a criminal case may be removed to a circuit court of another county only upon a showing that the minds of the inhabitants of the county in which the cause is pending are so prejudiced against the defendant that a fair and impartial trial cannot be had.²

With these standards in mind, Crawford's conclusory allegations regarding his counsel's decision not to request a change in venue are insufficient to overcome the presumption that his counsel was effective. Furthermore, Crawford has not demonstrated that there is a reasonable probability of a different outcome had a change in venue been requested. Accordingly, we cannot say that the circuit court's denial of postconviction relief on this point was clearly erroneous.

²The supreme court in *Montgomery* also indicated that a defendant cannot show that he was prejudiced by the composition of the jury if he failed to exhaust all of his peremptory strikes, and we observe that Crawford did not use all his peremptory strikes during jury voir dire.

B. Failing to Object to Confusing Jury Instructions, Which Resulted in the Jury Erroneously Convicting Appellant of First-Degree Murder

The jury was instructed on first-degree murder by alternate means. The jury was given AMI Crim. 2d 1002 and was instructed as follows:

To sustain this charge, the State must prove the following things beyond a reasonable doubt:

First: That Correy Crawford, acting alone or with one or more other persons, committed or attempted to commit aggravated robbery, and

Second: That in the course of an in furtherance of that crime or in immediate flight therefrom, Correy Crawford, or a person acting with him caused the death of Demarcus Daniels under circumstances manifesting extreme indifference to the value of human life

OR

That with the purpose of causing the death of another person, Correy Crawford, or a person acting with him, caused the death of Demarcus Daniels.³

The jury was also given AMI Crim. 2d 1002-A, which is titled “FIRST DEGREE MURDER - ASSOCIATED FELONY,” and which sets forth the elements of aggravated robbery. This instruction further states, “If the crime of aggravated robbery is not proved to have been committed or attempted by Correy Crawford he is not guilty of murder in the first degree.”

Crawford argues that because the jury did not find him guilty of aggravated robbery, he could not be found guilty of first-degree murder according to the jury instructions given. Crawford notes that the jury was given AMI Crim. 2d 1002-A, which states, “If the crime of

³This jury instruction was derived from Ark. Code Ann. § 5-10-102(a)(1) & (2) (Supp. 2021), which sets forth these alternate means of committing first-degree murder.

aggravated robbery is not proved to have been committed or attempted by Correy Crawford he is not guilty of murder in the first degree.” Crawford’s argument both below and on appeal is a hybrid argument. He claims that his counsel was ineffective for failing to preserve for a point on appeal that the jury exceeded its authority in finding him guilty of first-degree murder according to the instructions given. Crawford also argues that counsel was ineffective for failing to object to erroneous or confusing jury instructions that prejudiced the defense.

We first observe the instructions given to the jury were not erroneous. The jury was instructed in AMI Crim. 2d 1002 that it could find Crawford guilty of first-degree murder under alternate means, and instruction AMI Crim. 2d 1002-A was clearly applicable to only the first alternative that required a finding that Crawford committed or attempted to commit aggravated robbery. The second, independent alternative for a finding of guilt was that with the purpose of causing the death of another person, Correy Crawford, or a person acting with him, caused the death of DeMarcus Daniels—which did not include the commission of an underlying offense. Therefore, there was no basis for Crawford’s counsel to object to the instructions as given.

Moreover, while it is true that the jury did not find Crawford guilty of aggravated robbery, the record shows that the verdict form for that offense was inadvertently omitted from the packet of instructions submitted to the jury. Therefore, the jury did not return any verdict on aggravated robbery. Because the jury completed a general verdict for first-degree murder that only specified “guilty,” it may have found Crawford guilty under either or both

of the theories advanced by the State and with which the jury was instructed. To the extent Crawford is arguing that there was insufficient evidence to support his first-degree murder conviction, the circuit court correctly stated in its order denying relief that the sufficiency issue was already decided adversely to Crawford on direct appeal, *see Crawford I*, and it cannot be reargued under Rule 37. *See Nooner v. State*, 339 Ark. 253, 4 S.W.3d 497 (1999). For these reasons, we hold that the circuit court's denial of postconviction relief on this point was not clearly erroneous.

C. Failing to Challenge the State's Use of Peremptory Strikes
Under *Batson v. Kentucky*, 476 U.S. 79 (1986)

Crawford next argues that his counsel was ineffective for failing to challenge the State's peremptory strikes under *Batson*. Under *Batson*, the State is prohibited from using peremptory strikes to exclude jurors on the basis of race. Crawford contends that he was denied his constitutional right to a jury of his peers.

In Crawford's Rule 37 petition, he stated that one young black female was seated on the jury. However, in neither his Rule 37 petition nor in this appeal has Crawford identified any juror who was peremptorily struck by the State that would have constituted a potential *Batson* violation. Allegations that are not supported by facts and a showing of some prejudice to the petitioner do not justify postconviction relief. *Blackmon v. State*, 274 Ark. 202, 623 S.W.2d 184 (1981). Crawford's conclusory statements and allegations without factual substantiation are insufficient to overcome the presumption that counsel was effective and do not warrant postconviction relief. Accordingly, we affirm on this point.

D. Failing to Object to Prosecutorial Misconduct

Crawford next argues that his counsel was ineffective for failing to object to prosecutorial misconduct. Crawford asserts that his defense was that he was kidnapped and forced by masked assailants to participate in the crime at hand. Crawford states that after he was arrested in connection with the crime, the investigators closed their investigation and made no further arrests. Crawford asserts that this amounted to prosecutorial misconduct to which his counsel should have objected.

We find no merit to this point. Although Crawford alleges there was an incomplete investigation, he offers no explanation as to what objection should have been made or how it might have changed the outcome of the trial. Moreover, to the extent that this is a freestanding claim of prosecutorial misconduct untethered to a claim of ineffective assistance, our supreme court has held that such claims are not cognizable in Rule 37 proceedings. See *Ortega v. State*, 2017 Ark. 365, 553 S.W.3d 68. Also under this point, Crawford complains on appeal that his counsel failed to object to improper comments made by the prosecutor during its opening statement and closing argument. However, because Crawford failed to raise this specific argument in his Rule 37 petition, it is not preserved for review. See *Goshien v. State*, 2021 Ark. App. 384. We hold that the circuit court's denial of postconviction relief based on alleged prosecutorial misconduct was not clearly erroneous.

E. Failing to Investigate the Entirety of the Strength of the State's Case, Being Inattentive and Unprofessional During Trial, and Failing to Call an Expert Witness to Rebut the State's Evidence

Crawford next argues that his counsel was ineffective for failing to investigate the entirety of the strength of the State's case, being inattentive and unprofessional during trial, and failing to call an expert witness to rebut the State's evidence. We conclude, however, that Crawford has established none of these claims. With respect to his counsel's failure to investigate, we have held that an ineffective-assistance claim predicated on this ground must demonstrate how a more searching pretrial investigation would have changed the outcome of the trial. See *Warren v. State*, 2021 Ark. App. 441. Crawford has failed to make such a demonstration. Crawford also fails to explain how his counsel being more attentive or professional during the trial would have changed the outcome. With respect to Crawford's claim of ineffectiveness for failure to call an expert witness to rebut the State's evidence, he offered no further argument than this bare assertion in his Rule 37 petition. If a petitioner claims ineffective assistance based on a failure to call a witness, the petitioner must name the witness, provide a summary of the testimony, establish that the testimony would have been admissible into evidence, and demonstrate prejudice. *Abernathy v. State*, 2012 Ark. 59, 386 S.W.3d 477. Here, as found by the circuit court, Crawford met none of these requirements in his Rule 37 petition. In his argument on appeal, Crawford impermissibly expands this argument by claiming that an expert video analyst could have explained how the surveillance video that captured him holding a gun in the carport of the victim's home could have been altered. However, even were we to consider this additional argument not raised below, it still fails to satisfy the requirements set forth in *Abernathy*, *supra*. For these reasons, we find no clear error in the circuit court's denial of postconviction relief under this point.

F. Failing to Test a Firearm that was Possessed by the Victim's Fiancée on the Night of the Murder

Crawford asserts that, although the victim's fiancée, Delrico Coleman, testified that she possessed a handgun on the night the victim was shot, her gun was never tested to see if it may have fired the fatal shots. Crawford has changed his argument on appeal with respect to this issue. In his Rule 37 petition, Crawford argued that his counsel was ineffective for not asserting prosecutorial misconduct based on the State's failure to test the weapon, stating that this could be a "Brady-type violation."⁴ On appeal, Crawford instead argues that his counsel should have filed a motion to confiscate Coleman's gun for ballistic testing.

The supreme court has specifically said that the State is not obligated to perform certain scientific tests, noting that a defendant cannot rely on the State's discovery as a substitute for his or her own investigation. *Dumond v. State*, 290 Ark. 595, 721 S.W.2d 663 (1986). Therefore, Crawford's claim in his Rule 37 petition of prosecutorial misconduct or a *Brady* violation fails. As to Crawford's claim that his own counsel should have procured the testing of Coleman's gun, this argument is being raised for the first time on appeal and need not be addressed. *See Goshien, supra*. For these reasons, Crawford is not entitled to postconviction relief under this point.

G. Failing to Impeach the State's Witnesses

⁴A violation under *Brady v. Maryland*, 373 U.S. 83 (1963), occurs when the State suppresses exculpatory evidence, resulting in prejudice to the defense. *See Howard v. State*, 2012 Ark. 177, 403 S.W.3d 38.

Crawford next argues that his counsel was ineffective for failing to impeach the State's witnesses. In particular, Crawford challenges the extent of his counsel's cross-examination of Delrico Coleman and Samantha Wells, the two witnesses who identified Crawford at trial. Crawford contends that the testimony of these witnesses was self-contradictory and was also contradicted by the video-surveillance evidence.

We initially observe that Crawford's counsel did cross-examine these witnesses in an attempt to impeach their version of the events. The extent of Crawford's counsel's cross-examination of the witnesses was a matter of professional judgment, and matters of trial tactics and strategy are not grounds for postconviction relief on the basis of ineffective assistance of counsel. See *Carter v. State*, 2011 Ark. 226. In addition, appellant has not shown a reasonable probability of how a more vigorous cross-examination would have changed the outcome of the case. See *id.* Therefore, we conclude that the circuit court's denial of postconviction relief under this point was not clearly erroneous.

H. The Circuit Court's Failure to Hold an Evidentiary Hearing

Crawford also complains that the circuit court denied his claims of ineffective assistance of counsel without holding a hearing. Arkansas Rule of Criminal Procedure 37.3 requires an evidentiary hearing in a Rule 37.1 postconviction proceeding unless the petition and the files and records of the case conclusively show that the petitioner is entitled to no relief. *Horton v. State*, 2016 Ark. 424, 504 S.W.3d 582 (per curiam). If the files and the record conclusively show that the petitioner is not entitled to relief, the circuit court may simply make written findings to that effect, "specifying any parts of the files, or records that

are relied upon to sustain the court’s findings.” Ark. R. Crim. P. 37.3(a). From our review, we conclude that it is clear from the petition and the files and records of the case that appellant is entitled to no relief and that the circuit court did not err in failing to hold an evidentiary hearing.

I. The Circuit Court’s Failure to Appoint Counsel

Finally, Crawford contends that the circuit court erred in declining his request to appoint him counsel in the postconviction proceedings. For postconviction matters, however, there is no absolute right to counsel. *Lane v. State*, 2019 Ark. 5, 564 S.W.3d 524.

The appointment of counsel in postconviction proceedings is discretionary and not mandated. *Id.* The circuit court is given its discretion to appoint counsel for Rule 37 proceedings under Arkansas Rule of Criminal Procedure 37.3(b). The abuse-of-discretion standard is a high threshold that does not simply require error in the circuit court’s decision but requires that the circuit court act improvidently, thoughtlessly, or without due consideration. *Hortenberry v. State*, 2017 Ark. 261, 526 S.W.3d 840.

In order to demonstrate an abuse of discretion by the circuit court in declining to appoint counsel, Crawford had to make a substantial showing that his petition included a meritorious claim and that he could not proceed without counsel. See *Evans v. State*, 2014 Ark. 6. As discussed above, Crawford’s claims in the petition did not demonstrate merit. In his request for representation, Crawford did not identify a specific claim that had potential merit and describe with particularity how counsel was needed to develop the claim. See *Lane*, *supra*. Vague, generalized assertions that counsel is needed to examine the claims are not

sufficient. *Id.* Crawford therefore did not make the requisite showing, and we find no abuse of discretion in the circuit court's declining to appoint counsel.

V. *Conclusion*

For the reasons stated herein, we find no clear error in the circuit court's denial of Crawford's Rule 37 petition for postconviction relief. Accordingly, we affirm.

Affirmed.

MURPHY and BROWN, JJ., agree.

Correy Crawford, pro se appellant.

Tim Griffin, Att'y Gen., by: *Kent G. Holt*, Ass't Att'y Gen., for appellee.