

SUPREME COURT OF ARKANSAS

No. 08-667

KENNETH WHITE

APPELLANT

v.

M.D. REED, WARDEN, CUMMINS
UNIT

APPELLEE

Opinion Delivered December 3, 2009

PRO SE PETITION FOR REHEARING
[CIRCUIT COURT OF LINCOLN
COUNTY, LCV 2008-31, HON.
ROBERT H. WYATT, JR., JUDGE]

PETITION DENIED.

PER CURIAM

Appellant Kenneth White filed a petition for writ of habeas corpus in the county where he was incarcerated by virtue of a conviction for murder in the first degree. The petition was denied, and we affirmed the order. *White v. State*, 2009 Ark. 340 (unpublished per curiam). On appeal, we held that appellant failed to demonstrate that the trial court lacked jurisdiction over his case, which was required to establish entitlement to habeas relief. *Id.*; see also *Friend v. Norris*, 364 Ark. 315, 219 S.W.3d 123 (2005) (per curiam). Now before us is appellant's petition for rehearing.

A petition for rehearing should be used to call attention to specific errors of law or fact that the opinion is thought to contain. Ark. Sup. Ct. R. 2-3(g) (2009). Here, appellant fails to meet his burden of demonstrating that he is entitled to rehearing pursuant to Rule 2-3.

In 1976, appellant entered a plea of guilty to first-degree murder. He contends here



Cite as 2009 Ark. 603

that, as the trial judge was related to the prosecutor, the judge had an affirmative duty to recuse, and failure to do so was a fundamental error sufficient to void the judgment of conviction and deprive the judge of jurisdiction to accept appellant's guilty plea.

As we said on appeal, appellant's brief addressed the relationship between the judge and prosecutor as the only basis for the claim that the trial court was without jurisdiction in his case. The assertion concerning violations of judicial canons that appellant now raises in this petition for rehearing was not raised in the petition for writ of habeas corpus filed in circuit court. While a court's jurisdiction can be raised for the first time in an appeal, we held in the instant appeal that appellant had failed to demonstrate that the court lacked jurisdiction, and appellant has not established in his request for rehearing that the court lacked jurisdiction. Even if there were a violation of a canon, appellant has fallen far short of demonstrating that the court in his case was divested of jurisdiction. See *Adams v. State*, 269 Ark. 548, 601 S.W.2d 881 (1980).

Appellant alternatively contends that the Arkansas Constitution mandated that the trial judge recuse, but this requirement is not contained in the constitution. At the time of appellant's trial, article VII, § 20, cited by appellant, concerned a judge's relationship to *parties* in a lawsuit over which the judge is presiding and not to the attorneys representing the parties.¹ *Accord Byler v. State*, 210 Ark. 790, 197 S.W.2d 748 (1946).

Appellant relies on *Byler* in the petition for rehearing. In *Byler*, the judge was related

¹Section 20 of article VII was repealed by amendment 80, § 22, which became effective July 1, 2001.



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to the defendant's victim, which violated former article VII, § 20, of the Arkansas Constitution. We need not determine whether the judge's relationship to the prosecutor in appellant's case violated the constitutional provision based on the holding in *Byler*, inasmuch as the remedy in *Byler* was to remand the matter to the trial court for a new trial; the judgment was not declared void.

Petition denied.

Kenneth White, pro se.

No response.