

ARKANSAS SUPREME COURT

No. 08-648

KENNY HALFACRE AND
NARVELL JOHNSON
Appellants

v.

STATE OF ARKANSAS, BY AND
THROUGH THE GOVERNOR, HOUSE
OF REPRESENTATIVES, SENATE AND
SECRETARY OF STATE
Appellees

Opinion Delivered January 22, 2009

PRO SE APPEAL FROM THE CIRCUIT
COURT OF PULASKI COUNTY, CV
2008-443, HON. TIMOTHY D. FOX,
JUDGE

AFFIRMED.

PER CURIAM

In 2008, appellants Kenny Halfacre and Narvell Johnson filed a joint pro se complaint for declaratory judgment and writ of mandamus challenging the constitutionality of an amendment to the Arkansas Constitution. The complaint was filed in the circuit court of the county in which both had been convicted of criminal charges.¹ The trial court dismissed the complaint, and appellants have lodged a pro se joint appeal here from the order.

In the complaint for declaratory judgment filed in the court below, and on appeal, appellants

¹Appellant Halfacre was convicted by a jury of aggravated robbery and sentenced to life imprisonment. We affirmed. *Halfacre v. State*, 292 Ark. 329, 731 S.W.2d 182 (1987). Appellant Johnson was convicted by a jury of aggravated robbery and theft of property and sentenced to 20 years' imprisonment. The Arkansas Court of Appeals affirmed. *Johnson v. State*, CACR 04-1352 (Ark. App. Aug. 31, 2005). In another case, Johnson was convicted by a jury of aggravated robbery, theft of property, and fleeing. He was sentenced to 60 years' imprisonment in that matter and the court of appeals affirmed. *Johnson v. State*, CACR 05-82 (Ark App. Oct. 5, 2005). Halfacre was also convicted in Jefferson County for burglary and sentenced to 30 years' imprisonment. *Halfacre v. State*, CACR 85-171 (Ark. App. Mar. 15, 2007). However, this charge is not at issue in this matter.

argue that Amendment 21 to the Arkansas Constitution was passed in an unconstitutional manner.² That amendment in part granted local prosecutors the authority to bring criminal charges against a defendant by filing an information. All of the criminal charges filed against appellants at issue here were brought by information rather than by grand jury indictment. Appellants reason that, based upon the alleged unconstitutionality of the prosecutor's authority to initiate criminal charges against them in an information, their convictions would likewise be unconstitutional. Appellants also sought a writ of mandamus to compel the circuit court to set aside their convictions had they prevailed on the issue of an unconstitutional criminal information.

Contrary to appellants' argument, this court has previously held that Amendment 21 was constitutionally enacted in all respects challenged by appellants. *Brockelhurst v. State*, 195 Ark. 67, 111 S.W.2d 527 (1937); *see also Rudd v. State*, 76 Ark. App. 121, 61 S.W.3d 885 (2001).

Appellants' argument constitutes a postconviction collateral attack challenging the judgments entered against them. Collateral attacks are not claims cognizable in a petition for declaratory judgment. *See Johnson v. State*, 340 Ark. 413, 12 S.W.3d 203 (2000) (per curiam). Appellants were required to raise any constitutional claims at trial and on direct appeal, but not in a postconviction proceeding. *See Williams v. State*, 346 Ark. 54, 56 S.W.3d 360 (2001) (citing *Sasser v. State*, 338 Ark. 375, 993 S.W.2d 901 (1999) (per curiam)).

We do not reverse a denial of postconviction relief unless the trial court's findings are clearly erroneous. *Greene v. State*, 356 Ark. 59, 146 S.W.3d 871 (2004). A finding is clearly erroneous

²Appellants specifically contended that Amendment 21 (1) was passed by voters when the Arkansas General Assembly had no authority to place the proposed amendment on the ballot, (2) violated Article 19, § 22 of the constitution by improperly placing an excessive number of proposed constitutional amendments on a ballot during the 1936 election, and (3) violated Article 2, § 8 and § 29 of the constitution by encroaching upon the rights of the people.

when, although there was evidence to support it, the appellate court after reviewing the entire evidence is left with the definite and firm conviction that a mistake has been committed. *Flores v. State*, 350 Ark. 198, 85 S.W.3d 896 (2002). Because appellants present no cognizable grounds upon which the trial court could grant the relief sought by means of a complaint for declaratory judgment and a petition for writ of mandamus, we find no error and affirm the decision of the circuit court.

Affirmed.