

Robert L. BARTON *v.* STATE of Arkansas

644 S.W.2d 272

Supreme Court of Arkansas
Opinion delivered January 10, 1983

1. **CRIMINAL PROCEDURE — POSTCONVICTION RELIEF — RIGHT TO APPEAL MAY BE WAIVED.** — Just as a convicted defendant may waive his right to appeal by failure without good cause to file notice of appeal, a petitioner whose Rule 37 petition is denied may also waive his right to appeal.
2. **APPEAL & ERROR — NO GOOD CAUSE SHOWN TO GRANT MOTION FOR BELATED APPEAL.** — Where appellant filed for federal habeas corpus relief and was denied relief because he had failed to exhaust state remedies after being informed by the trial court that his next step was to appeal the denial of his Rule 37 petition for postconviction relief to the Supreme Court; appellant waived his right to appeal the denial of his petition and has not shown good cause for the court now to grant his motion for belated appeal.

Pro se Motion for Belated Appeal; motion denied.

Appellant, *pro se.*

Steve Clark, Atty. Gen., by: Alice Ann Burns, Asst. Atty. Gen., for appellee.

PER CURIAM. According to the pro se motion for belated appeal before us, petitioner Robert L. Barton filed a pro se petition for postconviction relief under Rule 37 in the trial court. It was denied. The trial court notified petitioner of the denial by letter dated April 28, 1982. The trial court also advised him by letter dated May 5, 1982, that his next option was to proceed to the Supreme Court. Nevertheless, "through ignorance of the law," he sought federal habeas corpus relief rather than filing a notice of appeal to this Court. When the federal court denied relief on the ground that he had failed to exhaust state remedies, he filed this motion for belated appeal.

The motion is denied. Just as a convicted defendant may waive his right to appeal by failure without good cause

to file a notice of appeal, a petitioner whose Rule 37 petition is denied may also waive his right to appeal. Petitioner concedes that he was informed by the trial court that his next step was to proceed in the Supreme Court. He has shown no good reason for not doing so.

Motion denied.
