

Benjamin JOHNSON v. STATE of Arkansas

CR 86-70

716 S.W.2d 202

Supreme Court of Arkansas
Opinion delivered September 29, 1986

APPEAL & ERROR — MATTER NOT RAISED IN TRIAL COURT NOT CONSIDERED ON APPEAL — EXCEPTION. — Where a case is before the Arkansas Supreme Court on direct appeal, the Court does not consider matters not raised before the trial court, except where prejudice is conclusively shown and relief would unquestionably be granted under Rule 37, A.R.Cr.P.

Appeal from Pulaski Circuit Court, First Division; *Floyd J. Lofton*, Judge; affirmed.

William R. Simpson, Jr., Public Defender, and *Thomas B. Devine, III*, Deputy Public Defender, by: *Arthur L. Allen*, Deputy Public Defender, for appellant.

Steve Clark, Att'y Gen., by: *Lee Taylor Franke*, Asst. Att'y Gen., for appellee.

JOHN I. PURTLE, Justice. The appellant was found guilty of rape and sentenced to 30 years. He was also found guilty of kidnapping for which he was sentenced to a term of ten years. The sentences were ordered to be served consecutively. On appeal the appellant argues the evidence to establish the lesser included offense of kidnapping was insufficient to support the conviction. We do not consider the argument because it is raised for the first time on appeal.

[1] This matter is before us on direct appeal, and we do not consider matters which were not raised before the trial court. *Rowe v. State*, 275 Ark. 37, 627 S.W.2d 16 (1982). We have made exception to this rule where prejudice is conclusively shown and relief would unquestionably be granted under A.R.Cr.P. Rule 37. *Singleton v. State*, 274 Ark. 126, 623 S.W.2d 180 (1981). We do not find such to be the case here, and accordingly affirm the judgment of the trial court.

Affirmed.
