

Larry Jack NATION v. STATE of Arkansas

CR 87-40 & CR 87-41

728 S.W.2d 513

Supreme Court of Arkansas  
Opinion delivered May 4, 1987

1. **CRIMINAL PROCEDURE — POST-CONVICTION RELIEF — ISSUES NOT RAISED IN ORIGINAL OR AMENDED PETITION ARE WAIVED.** — A.R.Cr.P. Rule 37.2(b) provides that all grounds for relief not raised in the original or amended Rule 37 petition are waived, unless the court which denied the original petition specifically did so without prejudice to filing a subsequent petition.
2. **CRIMINAL PROCEDURE — POST-CONVICTION RELIEF — HOW PETITION IS LABELED DOES NOT MATTER.** — A petitioner may not reassert issues or raise new ones which are properly addressed under A.R.Cr.P. Rule 37 by simply giving the petition a new name and filing it again.

Pro Se Motion for Appointment of Counsel; denied and appeals dismissed.

*Appellant, pro se.*

No response.

PER CURIAM. Appellant Larry Jack Nation pleaded guilty in 1983 to burglary and two counts of theft of property in cases No. CR 82-6 and CR 82-170. The circuit court suspended imposition of sentence in both cases. After he violated the conditions imposed when the guilty pleas were entered, appellant was sentenced to a total of forty years imprisonment. He appealed and this court affirmed. *Nation v. State*, 283 Ark. 250, 674 S.W.2d 939 (1984). In 1985, appellant filed in circuit court a petition under Criminal Procedure Rule 37 to vacate the guilty pleas. He also filed a petition and amended petition pursuant to Rule 37 in this court, alleging that the guilty pleas should be vacated. We denied the petition. *Nation v. State*, CR 84-28 (Ark. Feb. 10, 1986) (Order denying petition).

In November 1986, Nation filed in circuit court a petition for postconviction relief which he styled a "petition for writ of error coram nobis." The petition, which covered both CR 82-6 and CR 82-170, again raised the allegations already raised in this court under Rule 37 with additional allegations which were also cognizable under Rule 37. As permitted by *Walker v. State*, 283 Ark. 339, 676 S.W.2d 460 (1984), the trial court treated the error coram nobis petition as a Rule 37 petition since the grounds in the petition were covered by Rule 37 and were not within the purview of an error coram nobis action. *See Williams v. State*, 291 Ark. 255, 724 S.W.2d 158 (1987); *see also Williams v. State*, 289 Ark. 385, 711 S.W.2d 479 (1986). The trial court denied relief, and appellant appealed in each case. He now seeks appointment of counsel to represent him in the appeals from the denial of the petition.

[1, 2] The motions for appointment of counsel are denied and the appeals dismissed since it is clear that there is no merit to them. *See Baker v. Lockhart*, 288 Ark. 91, 702 S.W.2d 403 (1986). There are several reasons why the relief sought should be denied. The most immediately apparent is that the petition filed in circuit court was procedurally barred by Rule 37.2(b). Rule 37.2(b) provides that all grounds for relief not raised in the original or amended Rule 37 petition are waived, unless the court which denied the original petition specifically did so without prejudice to filing a subsequent petition. This court denied

appellant's Rule 37 petition with prejudice; therefore, he was not entitled to file a second petition in this court or the trial court. The fact that he chose to label the petition a petition for writ of error coram nobis did not change the fact that the grounds raised were encompassed by Rule 37. *Walker v. State, supra*. A petitioner may not reassert issues or raise new ones which are properly addressed under Rule 37 by simply giving the petition a new name and filing it again.

Motions denied and appeals dismissed.

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