

## Carl PRINCE v. STATE of Arkansas

CR 93-1020

868 S.W.2d 77

Supreme Court of Arkansas

Opinion delivered January 10, 1994

[Rehearing denied February 14, 1994.\*]

1. CRIMINAL PROCEDURE — POSTCONVICTION RELIEF — TIMELINESS OF APPEAL. — Ark. R. Crim. P. 37.2(c) provides that if an appeal was taken of the judgment of conviction, a Rule 37 petition must be filed in the circuit court within sixty days of the date a mandate was issued by the appellate court; appellant's petition was untimely where it was filed two years after his case was affirmed on appeal.
2. CRIMINAL PROCEDURE — POSTCONVICTION RELIEF — CLAIMS OF A FUNDAMENTAL NATURE THAT WOULD RENDER THE JUDGMENT VOID MUST BE FILED WITHIN THE TIME LIMIT SET BY RULE 37. — Claims of such a fundamental nature as to render the judgment void are no longer heard unless filed within the time limit set forth in Ark. R. Crim. P. 37.

Appeal from Sebastian Circuit Court; *John G. Holland*, Judge; affirmed.

*Carl Dwayne Prince*, for appellant.

*Winston Bryant*, Att'y Gen., by: *Brad Newman*, Asst. Att'y Gen., for appellee.

PER CURIAM. The appellant Carl Prince was convicted of burglary and theft and sentenced to fifty-five years imprisonment. His conviction was affirmed on appeal. *Prince v. State*, 304 Ark. 692, 805 S.W.2d 46 (1991). The appellant filed a petition for Rule 37 relief in the trial court which was denied. It is from that denial that this appeal is brought.

The appellant's chief allegation is that he was tried in Crawford County for possession of stolen property and acquitted. He claims that the state used the charge of possession of stolen property to prove the burglary and theft charges for which he was convicted in Sebastian County in violation of his right to be free of double jeopardy.

[1, 2] When the appellant was convicted in 1990, Criminal

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\*See per curiam opinion, not designated for publication.

Procedure Rule 37 was not in effect. *See In the Matter of the Abolishment of Rule 37 and Revision of Rule 36 of the Arkansas Rules of Criminal Procedure*, 299 Ark. 573, 770 S.W.2d 148 (1989). Criminal Procedure Rule 37 was reinstated on January 1, 1991. *In the matter of Reinstatement of Rule 37 of the Arkansas Rules of Criminal Procedure*, 303 Ark. 746, 797 S.W.2d 458 (1990). Arkansas Rules of Criminal Procedure Rule 37.2(c) provides that if an appeal was taken of the judgment of conviction, a Rule 37 petition must be filed in the circuit court within sixty days of the date a mandate was issued by the appellate court. The appellant did not file his petition until two years after his case was affirmed on appeal. The appellant concedes that his petition is out of time but claims that his ground for relief would render the conviction absolutely void. When Rule 37 was reinstated the provision which had permitted relief in those instances where a ground was sufficient to void the conviction regardless of the timeliness of the petition was removed from the rule. Therefore claims of such a fundamental nature as to render the judgment void will no longer be heard unless filed within the time limit set forth in Rule 37.

Affirmed.

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