

Gerland Lee GASS v. STATE of Arkansas

CR 89-50

769 S.W.2d 24

Supreme Court of Arkansas
Opinion delivered May 1, 1989

1. CRIMINAL PROCEDURE — POST-CONVICTION RELIEF — PETITION MUST BE FILED WITHIN THREE YEARS OF DATE OF ENTRY OF JUDGMENT. — Ark. R. Crim. P. 37.2(c) provides that a petition claiming relief under the rule must be filed within three years of the date of entry of judgment, unless some ground for relief would render the judgment for conviction absolutely void.
2. CRIMINAL PROCEDURE — POST-CONVICTION RELIEF — THREE-YEAR PERIOD IS NOT FIGURED FROM DATE OF AFFIRMANCE ON APPEAL. — The three-year period within which a post-conviction relief petition must be filed begins to run at the date of entry of judgment, not the date of affirmance of the conviction on appeal.
3. CRIMINAL PROCEDURE — POST-CONVICTION RELIEF — INEFFECTIVE ASSISTANCE OF COUNSEL ARGUMENT IS INSUFFICIENT TO VOID CONVICTION ABSOLUTELY — PETITION DISMISSED. — Where petitioner alleged only that his attorney was ineffective at trial, his

¹ Arkansas cases on the subject of defining the term security are not models of clarity, and in my mind at least, the court must better define which test and what factors it will consider when confronted with this issue.

petition, which was filed more than three years after the date of entry of his conviction, was dismissed since the allegation was not sufficient to void a judgment absolutely.

Petition to Proceed in Circuit Court of Independence County Pursuant to Criminal Procedure Rule 37; petition dismissed.

Q. Byrum Hurst, for petitioner.

Steve Clark, Att'y Gen., by: *Theodore Holder*, Asst. Att'y Gen., for respondent.

PER CURIAM. The petitioner Gerland Lee Gass was found guilty by a jury of the offense of conspiracy to deliver a controlled substance, cocaine, and sentenced to thirty years imprisonment in the Arkansas Department of Correction. A fine of \$15,000 was also imposed. The Court of Appeals affirmed. *Gass v. State*, 17 Ark. App. 176, 706 S.W.2d 396 (1986). He now seeks post-conviction relief pursuant to Criminal Procedure Rule 37.

[1-3] Rule 37.2(c) provides that a petition claiming relief under the rule must be filed within three years of the date of entry of judgment, unless some ground for relief would render the judgment for conviction absolutely void. The judgment and commitment in petitioner's case were entered on November 9, 1984. Petitioner contends that the three year period should be figured from the date the Court of Appeals affirmed his conviction, but this is not a correct reading of the rule. *See Collins v. State*, 271 Ark. 825, 611 S.W.2d 182 (1981). As petitioner has alleged only that his attorney was ineffective at trial, an allegation which is not sufficient to void a judgment absolutely, the petition is dismissed.

Petition dismissed.

Carthel J. HODGES, Sr. v. Mary Ann HODGES

89-122

771 S.W.2d 741

Supreme Court of Arkansas
Opinion delivered May 1, 1989

PROHIBITION — REQUEST FOR WRIT DENIED BECAUSE RECORD AND ORDERS UNCLEAR. — Where the record and orders were unclear, petitioner's request for a writ of prohibition was denied.

Petition for Writ of Prohibition; denied.

Herrods of Arkansas, P.A., by: *E.H. "Buz" Herrod*, for petitioner.

Steve Clark, Att'y Gen., by: *Paul Cherry*, Asst. Att'y Gen., for respondent Pulaski County Chancery Court, Second Division.

PER CURIAM. [1] We deny the petitioner's request for a writ of prohibition, but we do so because the record and orders presented to us are unclear. In denying such relief, we in no way intend to give validity to the standing master order entered below, but assume that any issue addressing that point would be presented to us along with any other in any appeal.

HICKMAN, J., not participating.
