

Steve RUSSAW v. STATE of Arkansas

CR 89-209

784 S.W.2d 170

Supreme Court of Arkansas
Opinion delivered February 20, 1990

CRIMINAL PROCEDURE — POSTCONVICTION RELIEF — PETITION LIMITED TO ISSUE OF WHETHER TRIAL COURT HAD JURISDICTION TO MODIFY SENTENCE ONCE IT HAD BEEN PUT INTO EXECUTION. — Where there was no certified record from which the appellate court could determine whether the petitioner had raised an issue cognizable under Rule 37, he was granted permission to proceed in the circuit court with a petition limited to the issue of whether the trial court had jurisdiction to modify the sentence once it had been put into execution.

Pro Se Rule 37 Petition granted.

Petitioner, Pro Se.

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

PER CURIAM. The petitioner Steve Edward Russaw was convicted of first degree battery and sentenced to ten years imprisonment and fined \$10,000. After his jury trial, he requested that, instead of the fine, the trial court sentence him to another year of commitment to be served consecutively to the ten year sentence. The trial court first considered the request but then ruled that since his family indicated that they could raise that amount of money for an appeal bond, he should pay the fine which the jury had recommended. The conviction was affirmed by the Arkansas Court of Appeals in an opinion not designated for publication. *Russaw v. State*, CACR 88-289 (August 23, 1989). The petitioner now seeks permission to proceed in circuit court for post-conviction relief.

[1] The petitioner alleges that on October 4, 1989, after his conviction was affirmed, he was taken before the trial court where the trial court withdrew the \$10,000 fine and imposed a one year sentence to be served consecutively to the first ten year sentence. The petitioner argues that the court was acting without its jurisdiction to impose two sentences for the same crime and that

he was denied a fair trial because he was not represented by counsel for the October 4 hearing. The hearing does not appear in the transcript. Since there is no certified record from which we can determine whether the petitioner has raised an issue cognizable under Rule 37, we grant him permission to proceed in circuit court with a petition limited to the issue of whether the trial court had jurisdiction to modify the sentence once it had been put into execution. *See Glick v. State*, 283 Ark. 412, 677 S.W.2d 844 (1984).

Petition granted.
