

RALPH H. HARTSELL, a/k/a DAVIS *v.* STATE
OF ARKANSAS

CR 73-34

495 S.W. 2d 523

Opinion delivered June 11, 1973

CRIMINAL LAW—POSTCONVICTION RELIEF—SCOPE & EXTENT OF CRIMINAL PROCEDURE RULE 1.—Criminal Procedure Rule 1 provides postconviction relief only for a prisoner in custody under sentence of a State Circuit Court but is not designed for, and the Supreme Court declined to enlarge its scope to include a prisoner under sentence in a Federal Court.

Appeal from Garland Circuit Court, *Henry M. Britt*, Judge; affirmed.

J. E. Sanders, for appellant.

Jim Guy Tucker Atty. Gen by: *James W. Atkins*,
Asst. Atty. Gen., for appellee.

FRANK HOLT, Justice. Appellant through court appointed counsel asserts that the court's order denying his pro se Rule 1 motion to vacate his judgment and sentence is erroneous. The court was correct in denying, pursuant to subparagraph (C) of the Rule, an evidentiary hearing.

In his motion he alleged that his request for counsel was denied and he was not represented by counsel when he entered a guilty plea to grand larceny in 1943 and, also, that the resulting one year sentence enhanced his present federal sentence. It is true that the court records do not reflect appellant was represented by counsel. Even so, as the state contends, our Rule provides post conviction relief only for "[A] prisoner, in custody under sentence of a *circuit* court. . ." (Emphasis added). Criminal Procedure Rule 1A, Ark. Stat. Ann., Vol. 3A, Suppl. 1971, p. 107. It is not designed for and we decline to enlarge the scope of it to include a prisoner under sentence of a *federal* court. Certainly, appellant was and is not precluded from seeking the asserted post conviction relief, for which the federal rules provide, in the appropriate federal forum.

Affirmed.

HARRIS, C.J., concurs.