

**SUPREME COURT OF ARKANSAS**

No. CR 09-389

MANUEL ENRIQUE CAMACHO  
Appellant

v.

STATE OF ARKANSAS  
Appellee

**Opinion Delivered** May 26, 2011

PRO SE APPEAL FROM THE  
BENTON COUNTY CIRCUIT  
COURT, CR 2006-802(B), HON.  
TOM J. KEITH, JUDGE

AFFIRMED.

**PER CURIAM**

On July 11, 2008, appellant Manuel Enrique Camacho entered a guilty plea to capital murder, and the Benton County Circuit Court sentenced him to life imprisonment without parole. Appellant filed a timely, verified petition for postconviction relief under Arkansas Rule of Criminal Procedure 37.1 (2011) that was denied without a hearing. On appeal, appellant contends that the trial court should have held a hearing on the petition and that it made a number of other errors regarding his claims for relief. Because it is clear that the petition was without merit, we affirm the trial court's denial of postconviction relief.

Where no hearing is held on a Rule 37.1 petition, the trial court has an obligation to provide written findings that conclusively show that the petitioner is entitled to no relief. *Davenport v. State*, 2011 Ark. 105 (per curiam); *see also* Ark. R. Crim. P. 37.3. This court may affirm the denial of a Rule 37.1 petition regardless of the adequacy of the order if we can determine from the record that the petition was wholly without merit. *Davenport*, 2011 Ark. 105.

Appellant's petition listed six claims for relief, not all of which were cognizable under the circumstances presented here. Appellant did not assert error in his sentencing, and, because he entered a guilty plea, cognizable claims were limited to those asserting that his plea was not entered intelligently and voluntarily upon advice of competent counsel. *See Polivka v. State*, 2010 Ark. 152, 362 S.W.3d 918. Appellant raised claims that his charges should have been dismissed for a speedy-trial violation, that he was denied counsel because the Mexican consulate was not informed upon his arrest, that he was not found competent to stand trial, that his guilty plea was coerced, that the prosecution withheld evidence, and that his counsel was ineffective. Direct challenges such as appellant's claims of a speedy-trial violation and prosecutorial misconduct are not cognizable in Rule 37.1 proceedings. *See Travis v. State*, 2010 Ark. 341 (per curiam); *State v. Wilmoth*, 369 Ark. 346, 255 S.W.3d 419 (2007).

Appellant's claim concerning denial of counsel, although couched in those terms, is rather an attack on the appropriateness of the consular notice that was given. Appellant was given the notice after he provided a statement, and a representative of the consulate and an attorney representing the Mexican government participated to some extent in the proceedings. Appellant asserted that he would not have given a confession if he had been properly notified upon his detention of his right to consular notification. That issue was vetted in hearings on appellant's motion to suppress the statement, which was denied. The validity of that ruling might have been contested on appeal if appellant had chosen not to enter a guilty plea and had continued to trial, but the issue does not have, under the circumstances

here, any bearing on whether appellant's plea was voluntarily given or whether appellant was properly represented by counsel.

Appellant's next claim asserted that he was not found competent to stand trial. A defendant in a criminal case is ordinarily presumed to be mentally competent to stand trial, and the burden of proving incompetence is on the defendant. *Whitham v. State*, 2011 Ark. 28 (per curiam); *Davis v. State*, 375 Ark. 368, 291 S.W.3d 164 (2009) (citing *Mask v. State*, 314 Ark. 25, 32, 869 S.W.2d 1, 5 (1993)). Despite appellant's apparent contention that his competency to stand trial or to enter his plea was placed in issue, it was not.

The trial court initially ordered the defense to hire independent doctors to examine appellant and evaluate his mental condition and history. The court later ordered a mental evaluation of appellant at the state hospital, apparently in response to counsel's expressed concerns that the reports would not be received in time and that appellant intended to put on evidence during the guilt phase from one of the doctors hired by the defense. Counsel indicated in later proceedings that the defense had received a report on the mental evaluation from one of the independent doctors and had determined that it would not present any psychological evidence in the guilt phase, but did intend to use the evidence in the report during sentencing. If appellant was evaluated by the state hospital under the court's ruling, that evaluation was only to be used during any sentencing proceedings. No report was included in the record. The state hospital evaluation in this case, if completed, was not to determine whether appellant was impaired from assisting his attorneys or otherwise pursuing his defense by virtue of any mental disease or defect.

A petitioner who asserts incompetence for the first time in a petition for postconviction relief has the heavy burden of demonstrating with facts that he or she was not competent at the time of trial. *Robertson v. State*, 2010 Ark. 300, 367 S.W.3d 538 (per curiam). Even though a petitioner can document a history of mental illness or show that counsel could have argued incompetence, that showing without more is not sufficient to warrant postconviction relief. *Id.* Although appellant may have had a mental-health examination, that fact alone, particularly in light of the particular circumstances presented here, was not sufficient to demonstrate that he was not competent. That his attorneys elected not to raise a challenge to appellant's competency after receiving a report from retained professionals on the issue weighs heavily against any demonstration of incompetency.

Appellant's next claim in his petition was that he was coerced into entering a guilty plea. He alleged that his attorney told him that he had no chance and that he would get the death penalty if he went to trial. He alleged that the jury would have been biased against him, that motions for change of venue and severance had been denied, that information about his record had been made public, that the judge would not accept a plea to a term of years, that voir dire was performed in chambers, and that people involved with the prosecuting agency were related to the victim. None of the allegations in the petition rose to the level of coercion. *See Pierce v. State*, 2009 Ark. 606 (per curiam).

Finally, appellant alleged ineffective assistance of counsel on the basis that counsel did not perform sufficient investigation, did not provide an interpreter, released negative

information to the press, tried to induce him to accept a plea and intimidated appellant's wife in order to persuade her to convince him to accept a plea, and failed to file a motion for dismissal on the basis of a speedy-trial violation. Where the judgment was based on a guilty plea, a petitioner claiming ineffective assistance of counsel must demonstrate prejudice by showing that there was a reasonable probability that, but for counsel's alleged error, the petitioner would not have pled guilty and would have insisted on going to trial. *Goldsmith v. State*, 2010 Ark. 158 (per curiam). An appellant who has entered a guilty plea normally will have considerable difficulty in proving any prejudice, as the plea rests upon an admission in open court that the appellant did the act charged. *Id.* Appellant's claims failed to demonstrate the requisite prejudice.

Appellant's allegations about insufficient investigation do not include any facts that would tend to support an assertion that further investigation would have changed the result in this case. Appellant was facing the death penalty. The factual basis at his plea hearing and the statements held admissible in pretrial hearings indicated that ample evidence was available that appellant positioned the car so that his codefendant could fire the fatal shot. Under the circumstances, even if, as appellant implied in the petition, further investigation may have provided evidence of a gun in the victim's car, that evidence would not have provided a strong defense to the charge.

The plea offer in this case would prevent imposition of the death penalty in a case where a conviction was very likely. Even assuming that additional evidence could have been

discovered through further investigation, that counsel released information about his record, and that counsel was intimidating to appellant and appellant's wife, appellant failed to provide facts in the petition to show any prejudice resulting from those claims; he made no showing that a stronger defense might have been made and that there was therefore a reasonable probability that, but for counsel's alleged errors, he would not have entered a guilty plea and would have insisted on going to trial.

Although appellant contended that he was prejudiced by the absence of an interpreter, the trial court found in conjunction with the suppression hearing that appellant understood English. The record indicates that an interpreter was present for some hearings, and the recordings of appellant's statements support the court's findings on that point. Appellant did not provide any specific example of a communication with his attorney that he failed to understand and that was crucial to his decision to enter the plea.

Appellant's last claim of ineffective assistance asserted that counsel failed to file a motion to dismiss for a speedy-trial violation. Appellant did not demonstrate prejudice as to this claim because he did not establish in his petition that counsel could have filed a successful motion on that basis. Trial counsel cannot be ineffective for failing to make an objection or argument that is without merit. *Mitchem v. State*, 2011 Ark. 148 (per curiam).

In the situation presented here, appellant was required to show that counsel could have presented an argument that appellant was tried in violation of the speedy-trial rule as set forth in our rules of criminal procedure. *See Johnson v. State*, 2009 Ark. 552 (per curiam). Appellant did not set forth any specific argument to show that counsel could have challenged the periods

of exclusion noted in the court's docket or otherwise challenged the date set for trial as a violation of the speedy-trial rule.

The record shows that voir dire for appellant's trial commenced one year and 428 days after his arrest on May 7, 2006. Under Arkansas Rule of Criminal Procedure 28.1 (2009), appellant should have been brought to trial within one year of his arrest, excluding periods of necessary delay as set forth in Arkansas Rule of Criminal Procedure 28.3. The record shows that the court's docket noted nine excluded periods totaling 415 days. In addition, the court ordered the defendant's examination by the state hospital on June 6, 2008. The order would have tolled the running of the speedy-trial time under Rule 28.3 from that time until at least the date of the hearing on June 25, 2008, in which defense counsel advised the court that he had received a report concerning the defense expert's evaluation and that the examination was not needed for any purpose other than mitigation. With this additional excluded period of nineteen days, for a total excluded period of 434 days, the time period indicated on the court's docket does not demonstrate a speedy-trial violation. Appellant presented no basis on which counsel might have successfully moved to dismiss for a speedy-trial violation.

Because the record demonstrates that appellant's petition did not set forth any meritorious claim under Rule 37.1, the trial court did not err in dismissing the petition without a hearing. Accordingly, we affirm the denial of postconviction relief.

Affirmed.