

William L. SEATON *v.* STATE of Arkansas

CR. 96-65

920 S.W.2d 13

Supreme Court of Arkansas  
Opinion delivered April 22, 1996

1. CRIMINAL PROCEDURE — POSTCONVICTION RELIEF — APPEAL OF DENIAL OF RELIEF NOT PERMITTED TO GO FORWARD WHERE APPEAL IS WITHOUT MERIT. — An appeal of the denial of postconviction relief will not be permitted to go forward where it is clear that the appeal is wholly without merit.
2. CRIMINAL PROCEDURE — POSTCONVICTION RELIEF — NINETY-DAY PERIOD FOR FILING RULE 37 PETITIONS ALSO APPLIES TO PLEAS OF *NOLO CONTENDERE* — JUDGMENT BASED ON *NOLO CONTENDERE* PLEA MAY BE CHALLENGED UNDER RULE 37. — Arkansas Rule of Criminal Procedure 37.2 (b) provides that a petition under the rule is untimely if not filed within ninety days of the date judgment was entered after a plea of guilty; the ninety-day period for filing petitions also applies to pleas of *nolo contendere*; the plea of *nolo contendere* to a charge in a criminal case is an admission of guilt in the case; A.R.Cr.P. Rules 24, 25, and 26, which govern pleas of guilty and *nolo contendere*, make no distinction between the pleas; a judgment founded on a plea of *nolo contendere* may be challenged in a proceeding under the postconviction rule.
3. CRIMINAL PROCEDURE — POSTCONVICTION RELIEF — RULE 37 TIME LIMITATIONS ARE JURISDICTIONAL — APPELLANT FILED UNTIMELY PETITION AND WAS ENTITLED TO NO RELIEF. — The time limitations imposed in Rule 37 are jurisdictional in nature; the circuit court may not grant relief on an untimely petition for postconviction relief; where appellant did not file his Rule 37 petition within ninety days, he was entitled to no relief; the supreme court denied appellant's motion for appointment of counsel and dismissed his appeal.

*Pro Se* Motion for Appointment of Counsel; Sebastian Circuit

Court; *Don R. Langston*, Judge; motion denied and appeal dismissed.

Appellant, *pro se*.

No response.

PER CURIAM. On May 12, 1995, judgment was entered reflecting that William L. Seaton had entered a plea of nolo contendere to four counts of sexual abuse and been sentenced to an aggregate term of twenty years' imprisonment. On September 11, 1995, Seaton filed in the trial court a pro se petition pursuant to Criminal Procedure Rule 37 to vacate the judgments. The trial court denied the petition, and appellant Seaton has lodged the record in this court on appeal. He now seeks by motion appointment of counsel.

[1] The motion is denied and the appeal dismissed. It is clear that the appellant could not prevail on appeal because the Rule 37 petition filed in the trial court was not timely. This court has consistently held that an appeal of the denial of postconviction relief will not be permitted to go forward where it is clear that the appeal is wholly without merit. See *Chambers v. State*, 304 Ark. 663, 803 S.W.2d 932 (1991); *Johnson v. State*, 303 Ark. 560, 798 S.W.2d 108 (1990); *Williams v. State*, 293 Ark. 73, 732 S.W.2d 456 (1987).

[2] Criminal Procedure Rule 37.2 (b) provides that a petition under the rule is untimely if not filed within ninety days of the date judgment was entered after a plea of guilty. The ninety-day period for filing petitions also applies to pleas of nolo contendere. The plea of nolo contendere to a charge in a criminal case is an admission of guilt in the criminal case. See *Patterson v. Odell*, 322 Ark. 394, 909 S.W.2d 648 (1995), citing *Hudson v. U.S.*, 272 U.S. 451 (1926). Criminal Procedure Rule 24, Rule 25, and Rule 26, which govern pleas of guilty and nolo contendere, make no distinction between the pleas for the purposes of the rule. See *Ashby v. State*, 297 Ark. 315, 761 S.W.2d 912 (1988). A judgment founded on a plea of nolo contendere may be challenged in a proceeding under our postconviction rule. See *Cusick v. State*, 259 Ark. 720, 536 S.W.2d 119 (1976).

[3] Here, judgment was entered on May 5, 1995, but the petition for postconviction relief was not filed until September 11, 1995, which was more than four months after the judgment was

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entered. The time limitations imposed in Rule 37 are jurisdictional in nature, and the circuit court may not grant relief on an untimely petition for postconviction relief. *Maxwell v. State*, 298 Ark. 329, 767 S.W.2d 303 (1989). As the appellant did not file his petition for postconviction relief within the ninety-day period set by Rule 37 to raise such claims, he was entitled to no relief under the rule. *Smith v. State*, 321 Ark. 195, 900 S.W.2d 939 (1995).

Motion denied and appeal dismissed.

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