Stanley Isaac NELSON *v* STATE of Arkansas

CR 04-732

213 S.W.3d 645

Supreme Court of Arkansas
Opinion delivered September 22, 2005

[Rehearing denied November 17, 2005.]

CRIMINAL PROCEDURE — POSTCONVICTION RELIEF — PETITION MUST BE VERIFIED, SIGNED BY PETITIONER HIMSELF, NOT COUNSEL — An Ark. R. Crim. P. 37 petition must be verified, and the verification must be signed by the petitioner himself, not his counsel; where the petition was not verified, the petition was dismissed.

Appeal from Pulaski Circuit Court, *Timothy Davis Fox*, Judge; dismissed.

Montgomery, Adams & Wyatt, PLC, by: *Dale E. Adams, Esq.,* for appellant.

Mike Beebe, Att'y Gen., by: *Brad Newman,* Ass't Att'y Gen., for appellee.

PER CURIAM. In a bench trial, Stanley Isaac Nelson was found guilty of one count of unlawful discharge of a firearm and sentenced to 360 months' imprisonment in the Arkansas Department of Correction. Nelson appealed and the court of appeals affirmed in an unpublished decision. *Nelson v. State,* CACR 02-867 (Ark. App. May 7, 2003). Nelson filed a timely petition for postconviction relief under Ark. R. Crim. P. 37.1. The trial court held a hearing on the petition and subsequently denied the petition by written order entered December 23, 2003. Nelson now brings this appeal of that order.

[1] We do not reach the merits of appellant's arguments on appeal because appellant's petition was not properly verified. Arkansas Rule of Criminal Procedure 37.1(d) requires that the petition be verified. The verification requirement for a postconviction relief petition is of substantive importance to prevent perjury. *Carey v. State,* 268 Ark. 332, 596 S.W.2d 688 (1980). To serve this purpose, a petitioner must execute the verification, and if the petitioner is represented by counsel, counsel may not sign and verify the petition for him. *Boyle v. State,* 362 Ark. 248, 208 S.W.3d 134 (2005) (*per curiam*).

Since the petition was not verified as required by Ark R
Crim. P. 37.1(d), dismissal of the petition was appropriate

Dismissed.