

Billy Joe WALKER *v.*
STATE of Arkansas

CR 84-171

678 S.W.2d 360

Supreme Court of Arkansas
Opinion delivered October 29, 1984

1. CRIMINAL PROCEDURE — POSTCONVICTION RELIEF — PROCEDURE WHEN ORIGINAL CASE APPEALED. — If the conviction in the original case was *appealed* to the Supreme Court or Court of Appeals, then the circuit court shall not entertain any proceedings under Ark. R. Crim. P. 37 without permission of the Supreme Court. [Ark. R. Crim. P. 37.2(a).]
2. CRIMINAL PROCEDURE — POSTCONVICTION RELIEF — “APPEALED” DEFINED. — “Appealed,” in Ark. R. Crim. P. 37.2(a) is interpreted to mean that a case must be affirmed before it becomes necessary to have the Supreme Court’s permission to proceed in circuit court; if an appeal is dismissed before final disposition, jurisdiction returns to the trial court to consider petitions for postconviction relief.

Petition to Proceed Pursuant to Criminal Procedure Rule 37; dismissed.

Clark & Crabtree, by: *Terry Crabtree*, for petitioner.

No position taken by the State.

PER CURIAM. Petitioner Billy Joe Walker was convicted in circuit court of theft by receiving and sentenced as a habitual offender to 30 years imprisonment. A fine of \$15,000 was also imposed. He appealed the conviction to the Court of Appeals. Before the Court of Appeals rendered a decision, petitioner asked that the appeal be dismissed so that he could proceed under A.R.Cr.P. Rule 37. The Court of Appeals granted the motion, noting that petitioner would have to proceed in the Supreme Court for postconviction relief.

Rule 37.2 (a) provides:

If the conviction in the original case was *appealed* to the Supreme Court or Court of Appeals, then no proceedings under this rule shall be entertained by the circuit court without permission of the Supreme Court.

The rule does not specify whether "appealed" denotes simply filing a notice of appeal or denotes only those cases affirmed on appeal, but we interpret it to mean that a case must be affirmed before it becomes necessary to have our permission to proceed in circuit court. If an appeal is dismissed before final disposition, jurisdiction returns to the trial court to consider petitions for postconviction relief.

Accordingly, since petitioner does not need our permission to file a Rule 37 petition in the circuit court, this petition is dismissed without prejudice.

Petition dismissed.