

Earl Lee BELL, a/k/a Earl Lee ANDERSON v. STATE
of Arkansas

CR 85-146

700 S.W.2d 788

Supreme Court of Arkansas
Opinion delivered December 16, 1985

1. CRIMINAL PROCEDURE — FAILURE OF ATTORNEY TO APPEAL — THREE YEARS ALLOWED UNDER RULE 37, A.R.CR.P. TO ASSERT ERROR. — Whatever remedy a convicted defendant has for his attorney's failure to appeal can be asserted under Criminal Procedure Rule 37.2(c) during the three years allowed under the Rule.
2. CRIMINAL LAW — WRIT OF ERROR CORAM NOBIS — WHEN AVAILABLE. — The writ of error coram nobis is available only when there existed some fact that would have prevented the rendition of judgment had the fact been known to the trial court.

Appeal from Nevada Circuit Court; *Philip B. Purifoy*, Judge; affirmed.

Phil Barton, for appellant.

Steve Clark, Att'y Gen., by: *Jerome T. Kearney*, Asst. Att'y Gen., for appellee.

GEORGE ROSE SMITH, Justice. On July 6, 1978, the circuit court entered a judgment on a jury verdict, committing the appellant to life imprisonment for rape. No appeal was taken, nor was a petition for post-conviction relief filed within the three years allowed by Criminal Procedure Rule 37.2(c). In June, 1983, Bell filed a petition for a writ of error coram nobis, which was denied after a hearing at which Bell testified that after the trial he told his attorney, both over the telephone and in a letter, that he wanted to discuss the matter of an appeal, but the attorney did not communicate with him. This appeal from the trial court's denial of relief comes to this court under Rule 29(1)(b) and (e).

[1, 2] Whatever remedy Bell had for his attorney's failure

to appeal could have been asserted under Rule 37, but the three-year limitation was allowed to lapse. The writ of error coram nobis is available only when there existed some fact that would have prevented the rendition of judgment had the fact been known to the trial court. *Troglin v. State*, 257 Ark. 644, 519 S.W.2d 740 (1975). No such situation is presented in the present case; so the trial court properly denied the writ.

Affirmed.

PURTLE, J., not participating.
