

Fabian COSTILLO v. John GOODSON, Judge

CR 86-20

707 S.W.2d 776

Supreme Court of Arkansas
Opinion delivered April 28, 1986

CRIMINAL PROCEDURE — PETITION FOR POSTCONVICTION RELIEF — TRIAL COURT DIRECTED TO HOLD HEARING AND ISSUE ORDER WITHIN SPECIFIED TIME. — Where it has been more than two years since a Rule 37 petition was filed and more than six months since the record was taken under review, the trial court has had ample time to rule on the petition, or to schedule a hearing; therefore, the court is directed to hold a hearing on the petition within thirty days and issue an order within fourteen days thereafter.

Pro Se Petition for Writ of Mandamus to Circuit Court of Miller County; petition granted.

Appellant, *pro se*.

No brief filed by respondent.

PER CURIAM. Petitioner was convicted on June 23, 1981 of aggravated robbery and sentenced to 75 years imprisonment. No appeal was taken. On June 19, 1984, petitioner filed in circuit court a *pro se* petition pursuant to Criminal Procedure Rule 37 which is still pending despite the elapse of almost two years. Petitioner has filed a petition for writ of mandamus with this Court, seeking an Order to compel the circuit judge to act on his petition.

The petition for writ of mandamus is granted. When our criminal case coordinator first contacted the circuit court about the pending petition, she was informed that the transcript was being prepared for the court to review. The delay in acting on the

petition was attributed to problems with transcribing the record from a deceased court reporter's file. In September, 1985, the trial judge informed the coordinator that the record had been completed and taken under review. The trial court responded to further inquiries in October, November and December, 1985, and January, 1986, that the record was still being reviewed. In mid-February, 1986, the court issued an order declaring Costillo indigent and providing him with a copy of the transcript. The order also indicated that at some point counsel had been appointed for Costillo. The prosecuting attorney was directed to turn over his files for counsel's inspection, and counsel was directed to examine the prosecutor's file and the transcript and request a hearing date as soon as his investigation was complete. As of the date of this opinion, the trial court has not notified this court that a hearing has been set.

[1] Since it has been more than two years since the date the Rule 37 petition was filed and more than six months since the record was taken under review, we find that the trial court has had ample time to rule on the Rule 37 petition, or at the least, schedule a hearing. Therefore, the court is directed to hold a hearing on the petition within thirty days and issue an order within fourteen days thereafter.

Petition granted,

PURTLE, J., not participating.
