

Edward Junior CRAFT v. STATE of Arkansas

CR 86-10

712 S.W.2d 303

Supreme Court of Arkansas
Opinion delivered July 14, 1986

1. CRIMINAL PROCEDURE — POST CONVICTION RELIEF — GROUNDS MUST BE ALLEGED THAT WOULD VOID THE CONVICTION. — Appellant was not entitled to post conviction relief since he did not allege grounds that would void his conviction.
2. CRIMINAL PROCEDURE — POST CONVICTION RELIEF — ONLY ONE PETITION ALLOWED. — Appellant is entitled to but one petition pursuant to Ark. R. Crim. P. 37.
3. CRIMINAL PROCEDURE — POST CONVICTION RELIEF — WAIVER OF GROUNDS NOT INCLUDED IN FIRST PETITION. — All grounds for relief not included in the first petition are deemed waived, unless the allegations would render the judgment of conviction absolutely void. [Ark. R. Crim. P. 37.2(b).]
4. CRIMINAL PROCEDURE — POST CONVICTION RELIEF — RELIEF MUST BE SOUGHT WITHIN THREE YEARS. — A petition claiming post conviction relief must be filed within three years of the conviction. [Ark. R. Crim. P. 37.2(c).]

Appeal from Jefferson Circuit Court, First Division; *Randall Williams*, Judge; affirmed.

Tripper Cronkhite, for appellant.

Steve Clark, Att'y Gen., by: *Theodore Holder*, Asst. Att'y Gen., for appellee.

JOHN I. PURTLE, Justice. The appellant was charged with capital felony murder in violation of Ark. Stat. Ann. § 41-1501 (Repl. 1977). On September 5, 1980, he entered a negotiated plea of guilty in return for a sentence of life without parole. He filed a Rule 37 petition on August 16, 1983. The petition, among other things, stated: "The defendant acknowledges that he is allowed by law to file such an application for relief only once in this court and that such legal action must be filed within three (3) years of his conviction by this court." The appellant simply argued that he was not guilty, i.e. that the evidence was not sufficient. The trial court entered a written order denying the petition without a hearing on August 25, 1983.

Subsequently the appellant continued to file various motions, petitions and letters. Among the filings was a motion, dated November 1, 1985, to withdraw a plea of guilty. The trial court entered an order on December 19, 1985, denying any post conviction relief. Notice of appeal by the appellant was filed on January 2, 1986. Present counsel was appointed on March 3, 1986.

[1] It is obvious from the record that appellant is not entitled to post conviction relief since he did not allege grounds which would void his conviction. See Rule 37.2(c); *Travis v. State*, 286 Ark. 26, 688 S.W.2d 935 (1985). Although not before the Court in this appeal, the record shows that appellant's first Rule 37 petition was denied by the trial court by a written order complying with Rule 37.3(a).

[2-4] The appellant was entitled to but one petition pursuant to Rule 37. All grounds for relief not included in the first petition are deemed waived, unless the allegations would render the judgment of conviction absolutely void. Rule 37.2(b); *Scott v. State*, 267 Ark. 536, 592 S.W.2d 122 (1980). A petition claiming such relief must be filed within three years. Rule 37.2(c); *Travis*, supra.

We have examined the complete record and do not find any proceeding or action which was prejudicial to the appellant.

Affirmed.

HOLT, C.J., not participating.
