

Timothy Wayne KEMP *v.* STATE of Arkansas

CR. 95-549

934 S.W.2d 526

Supreme Court of Arkansas
Opinion delivered December 16, 1996

APPEAL & ERROR — PORTION OF MANDATE AFFIRMING CONVICTION AND DEATH SENTENCE RECALLED AND STAYED. — The supreme court granted appellant's motion to clarify the stay of mandate and recalled the portion of the mandate affirming appellant's conviction and death sentence, staying it for a final disposition of the remaining counts and instructing that any petition under Ark. R. Crim. P. 37.2(c) must be filed within sixty days of a mandate following an appeal taken after

resentencing on the remaining counts and that if no appeal is taken after resentencing on these counts, the petition must be filed with the appropriate circuit court within ninety days of the entry of judgment.

Motion to Clarify Stay of Mandate granted; Stay granted.

Jeff Rosenzweig, for appellant.

No response.

PER CURIAM. Timothy Wayne Kemp was convicted of four counts of capital murder and sentenced to death on each count. In *Kemp v. State*, 324 Ark. 178, 919 S.W.2d 943 (1996), we affirmed Kemp's convictions, but reversed three of his four death sentences and remanded the case to the circuit court for resentencing. On May 28, 1996, we granted Kemp's motion to stay the mandate after he indicated that he planned to file a petition for certiorari with the United States Supreme Court. On November 12, 1996, the Supreme Court denied his petition. We issued our mandate on November 27, 1996, affirming Kemp's case in part, and reversing in part.

On November 18, 1996, prior to the issuance of the mandate but after the Supreme Court had denied his petition for certiorari, Kemp filed this motion for clarification of the stay of mandate in light of our criminal procedure rules governing the time for filing petitions for postconviction relief. In *Bowen v. State*, 323 Ark. 233, 913 S.W.2d 304 (1996), we announced our amendment to Ark. R. Crim. P. 37.2(c) to provide that, in cases where we affirm the conviction but reverse the sentence, a petition for postconviction relief must be filed within sixty days of a mandate following an appeal taken after resentencing, or, if no appeal is taken, the petition must be filed within ninety days of the circuit court's judgment. Kemp asks us to clarify our recently revised rule in light of cases such as his involving multiple counts where a conviction and sentence is affirmed as to one count in a case, but the sentences are reversed for resentencing on the remaining counts.

[1] We recall the portion of the mandate affirming the conviction and death sentence and stay it until such time as a final disposition of the remaining counts is complete. As such, any petition under Ark. R. Crim. P. 37.2(c) must be filed within sixty days of a mandate following an appeal taken after resentencing on the remaining counts. If no appeal is taken after resentencing on these

counts, the petition must be filed with the appropriate circuit court within ninety days of the entry of judgment.
