

CASES DETERMINED  
IN THE  
SUPREME COURT  
OF ARKANSAS

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Robert ROBBINS *v.* STATE of Arkansas

CR 98-1394

114 S.W.3d 217

Supreme Court of Arkansas

Dissenting opinion delivered September 4, 2003

**T**OM GLAZE, Justice, dissenting. I would grant the State's petition for rehearing. The majority court relied on some federal cases to support its decision to recall the mandate in this case, but fails to mention that federal courts recognize plain error when granting reviews; our court does not. In fact, our court is to review the record for error in life and death cases, but such review presupposes that an objection was made at trial. *See* Ark. Sup. Ct. R. 4-3(h); *Camargo v. State*, 337 Ark. 105, 987 S.W.2d 680 (1994) (death case affirmed where this court held that issues considered under Rule 4-3(h) are law of the case and may not be revisited).

The majority opinion also cites Ark. Sup. Ct. R. 5-3(d), and seems to suggest that rule allows the recall of the mandate in this case, however, there is *no* language in Rule 5-3 that allows recalling a mandate after the time for filing a rehearing petition has expired. Again, the majority court is relying on federal rules and cases to reopen this case. Arkansas cases have never adopted the federal appellate rules, and we should not do so now. If Robbins is entitled to any relief, he must seek it in federal court.

IMBER, J., joins this dissent.