

SUPREME COURT OF ARKANSAS

No. CR 10-244

GEORGE E. FRENCH

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered September 8, 2011

PRO SE APPEAL FROM THE SALINE COUNTY CIRCUIT COURT, CR-2007-659, HON. GRISHAM PHILLIPS, JUDGE

AFFIRMED.

PER CURIAM

Appellant George E. French appeals from the circuit court's order denying his motion to withdraw his guilty plea, which the circuit court treated as a petition seeking postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2011). We affirm the circuit court's order.

A review of the record reveals a judgment and commitment order, a first amended judgment and commitment order, and a second amended judgment and commitment order. The initial order, which was entered February 4, 2008, reflected that appellant entered a negotiated plea of guilty to seven counts, including kidnapping, intimidating a witness, possession of firearms by certain persons, two counts of aggravated assault on a family or household member, and two counts of terroristic threatening, and was sentenced to a total of 120 months' imprisonment.¹ An amended order was subsequently entered on February 20,

¹The order reflected that one count of domestic battery in the third degree had been nolle prossed.



2008.

On September 9, 2009, appellant filed a motion to withdraw his plea of guilty based on an alleged breach of the plea agreement. In his motion, appellant asserted that his plea agreement provided for “only 5 charges to be leveled, . . . where in fact there are 8 listed and 7 convictions.” and that his kidnapping count was transposed from a Class B felony, which he had discussed with his counsel, to a Class Y. For these reasons, he contended, he was entitled to withdraw his plea.

Subsequently, on November 20, 2009, the circuit court entered a second amended judgment and commitment order, which reflected that appellant entered a negotiated plea of guilty to kidnapping, aggravated assault on a family or household member, intimidating a witness, possession of firearms by certain persons, and terroristic threatening. It further reflected that three counts had been nolle prossed—one count of domestic battery in the third degree, one count of aggravated assault on a family or household member, and one count of terroristic threatening. On November 23, 2009, the circuit court entered its order in which it treated appellant’s petition to withdraw as one under Rule 37.1. It denied the petition on the basis that appellant had previously sought postconviction relief and could not file a subsequent petition under the rule. He now brings the instant appeal.

We have held that a motion to withdraw a guilty plea under Arkansas Rule of Criminal Procedure 26.1 is untimely if filed after entry of the judgment. *Williams v. State*, 2009 Ark. 287 (per curiam). In such an instance, a trial court may consider the motion as one for postconviction relief under Rule 37.1. *Id.* However, appellant was previously denied postconviction relief under that rule, and we dismissed his appeal because the sole cognizable



claim in his petition was without merit. *French v. State*, 2009 Ark. 443 (per curiam).

Our caselaw makes clear that a petitioner is not entitled to file a second petition under the rule unless the original petition was specifically denied without prejudice to filing a subsequent petition. *Mills v. State*, 2010 Ark. 310 (per curiam). When appellant's original petition was denied, the trial court did not grant him leave to proceed with a subsequent petition; therefore, appellant was procedurally barred from proceeding again under the rule. *Id.* Because appellant was not entitled to proceed under Rule 37.1 with a subsequent petition, there was no basis on which the circuit court could have granted postconviction relief. For that reason, the circuit court's order is affirmed.

Affirmed.