

SUPREME COURT OF ARKANSAS

No. CR 09-1119

MACK L. EASON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered September 15, 2011

PRO SE APPEAL FROM THE
CRITTENDEN COUNTY CIRCUIT
COURT [CR 2006-423] HON. RALPH
WILSON, JR., JUDGE

AFFIRMED.

PER CURIAM

Appellant Mack L. Eason appeals from the order of the Crittenden County Circuit Court denying his pro se petition for postconviction relief filed pursuant to Arkansas Rule of Criminal Procedure 37.1 (2011). We affirm.

On July 18, 2006, appellant pled guilty to a charge of sale of a controlled substance, cocaine, in violation of Arkansas Code Annotated § 5-64-401 and was sentenced to sixty months' probation. On August 24, 2006, the State filed a petition seeking to revoke appellant's probation, alleging that he failed to comply with certain terms of his probation and also alleging that he committed the offenses of arson, criminal mischief, theft, burglary, and attempted murder. Following a hearing on the revocation petition, the circuit court entered an order on October 24, 2006, granting the petition and sentencing appellant to a term of 360 months' imprisonment on the underlying drug charge.

Appellant filed an appeal of the order revoking his probation on November 15, 2006. In that appeal, he argued that the circuit court clearly erred in finding that he violated the



conditions of his probation and in denying his Confrontation Clause objection. The Arkansas Court of Appeals held that the circuit court did not clearly err in finding that appellant violated his probation based on the allegation that he committed the offense of arson. *Eason v. State*, 2009 Ark. App. 495 (unpublished). The court of appeals did not address the remaining allegations regarding the sufficiency of the evidence to support findings that he also violated his probation by failing to pay fines and committing attempted murder, as the State needed only to prove that appellant violated one condition of his probation. *Id.* Further, the court of appeals rejected appellant's Confrontation Clause argument based on his assertion that he was not allowed to cross-examine a witness.

Appellant then timely filed in the trial court a pro se Rule 37.1 petition. Therein, he alleged that (1) the State's filing of the revocation petition based on his failure to pay fines amounted to malicious prosecution, (2) he was being falsely imprisoned because of the probation revocation where his fines were not due to be paid at the time of his arrest and where he did not receive a fair trial on the remaining allegations, and (3) he was denied due process because he was not notified of his probation revocation nor was he advised of the additional charges.

The circuit court entered an order on September 16, 2009, denying appellant's Rule 37.1 petition. In its order, the circuit court found that appellant's grounds for relief were either conclusory allegations or were not cognizable in a Rule 37.1 proceeding. Further, the circuit court noted that the issues raised by appellant were either addressed on direct appeal or could have been raised on direct appeal. From that order, comes this appeal.

This court does not reverse a denial of postconviction relief unless the circuit court's



findings are clearly erroneous. *Jamett v. State*, 2010 Ark. 28, 358 S.W.3d 874 (per curiam) (citing *Britt v. State*, 2009 Ark. 569, 349 S.W.3d 290 (per curiam)). A finding is clearly erroneous when, although there is evidence to support it, the appellate court, after reviewing the entire evidence, is left with the definite and firm conviction that a mistake has been committed. *Jamett*, 2010 Ark. 28; *Anderson v. State*, 2009 Ark. 493 (per curiam).

At the outset, we address appellant's repeated contention that the circuit court erred in failing to grant him an evidentiary hearing on his Rule 37.1 petition. Arkansas Rule of Criminal Procedure 37.3(c) provides that an evidentiary hearing should be held in a postconviction proceeding unless the files and record of the case conclusively show that the prisoner is entitled to no relief. See *Wooten v. State*, 338 Ark. 691, 1 S.W.3d 8 (1999) (citing *Bobanan v. State*, 327 Ark. 507, 510, 939 S.W.2d 832, 833 (1997) (per curiam)). Where it dismisses a Rule 37.1 petition without an evidentiary hearing, the circuit court "shall make written findings to that effect, specifying any parts of the files, or records that are relied upon to sustain the court's findings." Ark. R. Crim. P. 37.3(a); see *Rodriguez v. State*, 2010 Ark. 78 (per curiam). Here, the circuit court complied with the requirements of Rule 37.3 by entering the appropriate order with findings on denying appellant's petition without a hearing. As such, there is no merit to appellant's contention that the circuit court erred in denying him an evidentiary hearing.

Turning now to his first point on appeal, appellant asserts that he was subjected to a malicious prosecution when the State sought to revoke his probation. Appellant's argument in this regard is nothing more than an attack on the sufficiency of the evidence supporting the revocation of his probation. It is well settled that allegations challenging the sufficiency of the evidence are not cognizable under Rule 37.1. *Mills v. State*, 2010 Ark. 390 (per curiam).



Likewise, a claim of prosecutorial misconduct is not one cognizable in a Rule 37.1 petition. *Howard v. State*, 367 Ark. 18, 238 S.W.3d 24 (2006). Finally, appellant challenged the sufficiency of the evidence supporting the revocation petition on direct appeal to the court of appeals, and that court affirmed. This court has explained that an issue already settled at trial or on direct appeal does not provide a ground of postconviction relief. *Hunes v. State*, 2010 Ark. 70 (per curiam); *O'Rourke v. State*, 298 Ark. 144, 765 S.W.2d 916 (1989) (per curiam). As such, we cannot say that the circuit court clearly erred in denying relief on this ground.

Next, appellant argues that he was falsely imprisoned following the revocation of his probation where he was never given a first appearance or bond hearing. Again, this is not a claim that is cognizable in a Rule 37.1 proceeding. Any challenge to his detention could have been raised during the revocation proceeding and, as such, may not be raised in a Rule 37.1 proceeding. *See, e.g., Viveros v. State*, 2009 Ark. 548 (per curiam); *Taylor v. State*, 297 Ark. 627, 764 S.W.2d 447 (1989) (per curiam).

Appellant's final point on appeal is that the circuit court erred in denying his petition that he was denied due process of law. Appellant's argument in this regard consists of several conclusory allegations that he was denied due process because the State failed to independently charge him with the offenses that it claimed supported the revocation of his probation, that he was denied the right to confront a witness, and that he was not informed of the evidence against him.

First, appellant's allegations that he was denied due process were stated in the petition as bare, conclusory allegations without factual development of any kind. Conclusory statements cannot be the basis of postconviction relief. *State v. Brown*, 2009 Ark. 202, 307 S.W.3d 587.



Cite as 2011 Ark. 352

Regardless, the allegations raised by appellant that he was not independently charged, that he was not given sufficient notice of the evidence against him, and that he was not allowed to cross-examine a witness are allegations that could have been or were raised below and on direct appeal. As such, these allegations may not be raised in the course of a Rule 37.1 proceeding. *Hunes*, 2010 Ark. 70; *O'Rourke*, 298 Ark. 144, 765 S.W.2d 916.

Affirmed.