Cite as 2011 Ark. 378

SUPREME COURT OF ARKANSAS

No. CR10-933

Opinion Delivered September 22, 2011

LUCILLE SMITH AND BRENDA SPENCER

APPELLANTS

V.

STATE OF ARKANSAS

APPELLEE

PRO SE APPEAL FROM THE ARKANSAS COUNTY CIRCUIT COURT, SOUTHERN DISTRICT, CR 74-17, HON. DAVID G. HENRY, JUDGE

AFFIRMED.

PER CURIAM

Appellants Lucille Smith and Brenda Spencer appeal to this court pro se from the dismissal by the Arkansas County Circuit Court, Southern District, of their motion pursuant to Arkansas Rules of Criminal Procedure 28.2(a) and 28.1(b) "to dismiss information with absolute bar to prosecution." We affirm.

In 1974, appellants were found guilty by a jury in Arkansas County of murder in the first degree and sentenced to life imprisonment. No appeal was taken. The two women also pled guilty in 1974 in Monroe County to robbery for which a sentence of twenty years' imprisonment was imposed on each of them. In addition, they each pled guilty in 1974 in Prairie County to six counts of kidnapping. Six terms of ten years' imprisonment were imposed to be served consecutively. Both received an additional consecutive term of ten years' imprisonment imposed in Prairie County that same year for possession of stolen property.

In 1996, twenty-two years after the judgments of conviction had been entered in the above-referenced cases, appellants filed in Arkansas County a joint pro se petition for writ of

error coram nobis. That petition was denied by the circuit court, and appellants filed a petition for writ of certiorari in this court seeking review. We denied the relief sought. *Smith v. State*, CR96-1312 (Ark. Mar. 24, 1997) (unpublished per curiam). Eight years later, appellants asked this court for permission to proceed with a belated appeal of the original judgment in Arkansas County. The motion was denied. *Smith v. State*, CR04-72 (Ark. Apr. 22, 2004) (unpublished per curiam). Thereafter, appellants filed a motion in Arkansas County contending that they were denied a speedy trial. The motion was denied. We dismissed an appeal from the order on the ground that the circuit court was without jurisdiction to rule on the motion as it was untimely, having been made more than thirty years after appellants were tried, convicted, and sentenced. *Spencer v. State*, CR 08-574 (Ark. Oct. 23, 2008) (unpublished per curiam).

On April 12, 2010, appellants filed in Arkansas County a pro se motion to dismiss the information with an absolute bar to prosecution pursuant to Rule 28.2(a) and Rule 28.1(b), arguing that neither appellant had been formally sentenced in accordance with Arkansas law in violation of their constitutional right to a speedy trial. In an order filed on July 15, 2010, the circuit court dismissed the motion, finding that the court was without jurisdiction because the motion was untimely. Appellants raise several arguments on appeal from the order to support their contention that the circuit court erred in dismissing their motion. The claims include that the charging information was never filed with the court as required by law; that the order of commitment was never filed so as to make it effective; that the order of judgment, although filed with the court, was never provided to the Arkansas Department of Correction (ADC) as required by statute; that, due to confusion regarding the jury instructions, the jury reached a

compromised verdict finding appellants guilty of first-degree murder and recommending a sentence of life in prison;[1] that appellants were transported to the ADC without ever having had a sentencing hearing before the circuit judge; and that two sets of commitment orders exist, one illustrating that appellants stood mute following the reading of the verdict and one set having been altered to show that appellants waived the mandatory forty-eight-hour waiting period prior to sentencing.[2] In support of their contentions, appellants include several documents in their addendum that are not part of the record in this case.

The arguments that appellants make in their most recent motion to dismiss the information are a repeat of the arguments they made in their 2008 motion for speedy trial. Consequently, our decision on appeal is the same—the circuit court is without jurisdiction, now thirty-seven years after the trial, to rule on this untimely posttrial motion. *See Spencer v. State*, CR08-574 (Ark. Oct. 23, 2008) (unpublished per curiam). Regardless of what appellants chose to label their motion, a motion to dismiss pursuant to Rule 28.2(a) and Rule 28.1(b) or a motion for speedy trial, the argument is still the same—that appellants were never sentenced in accordance with the law and their imprisonment violates their constitutional right to a speedy trial. We repeat our previous holding—the circuit court is without jurisdiction to rule on

[1]Appellants maintain that the jury intended appellants to serve life in prison with the possibility of parole in fifteen years. However, the record clearly reflects that the jury's verdict fixed punishment at a life sentence. Further, appellants failed to argue to the circuit court below that their life sentences were not the intent of the jury's verdict. Therefore, to the extent appellants assert that claim on appeal, it is not preserved for our review because it is made for the first time on appeal. *See Davis v. State*, 2009 Ark. 478, 348 S.W.3d 553.

[2]The latter commitment orders, filed for record on June 28, 1974, are part of the official record in this case. The former commitment orders, showing that appellants stood mute, were attached as an exhibit to appellants' motion to dismiss the information.

appellants' speedy-trial argument as the motion appellants filed, over three decades after their trial, was untimely.

Affirmed.

Lucille Smith and *Brenda Spencer*, pro se appellants.

Dustin McDaniel, Att'y Gen., by: *Eileen W. Harrison*, Ass't Att'y Gen., for appellee.