

William N. EVANS, Jr. *v.* STATE of Arkansas

CR 80-87

610 S.W. 2d 577

Supreme Court of Arkansas
Opinion delivered January 26, 1981

APPEAL & ERROR - CLAIM OF INSANITY PRESENTED AFTER TRIAL CANNOT BE CONSIDERED ON APPEAL - RULE 37 PROCEEDING AVAILABLE. - Where there was no claim of insanity at trial and no motion for new trial on that issue, evidence of insanity submitted after trial cannot be considered on appeal; however, appellant is not precluded from presenting the issue in a Rule 37 proceeding for post-conviction relief.

Appeal from Cleburne Circuit Court, *Leroy Blankenship*, Judge; affirmed.

Dave Wisdom Harrod, J.D., for appellant.

Steve Clark, Atty. Gen., by: *Mary Davies Scott*, Asst. Atty. Gen., for appellee.

DARRELL HICKMAN. William N. Evans, Jr., was convicted of rape and incest in the Cleburne County Circuit Court.

On appeal, his counsel raises only one issue which is that the Supreme Court should order a new trial because defendant was insane at the time of the trial. It is contended that this information was unavailable at trial.

The record is void regarding the issue. It contains no reference to the evidence or any request for post judgment relief on the issue. The appellant's counsel attempts to present the question by a brief to this court. He refers to a letter from a psychiatrist who found, after the trial, that Evans was insane. The letter is not in the record. There is no motion for a new trial.

Apparently an attempt was made to supplement the record but it was denied without prejudice to appellant's proceeding under Rules of Crim. Proc., Rule 37. Unless evidence is presented to a trial court and is properly in the record we cannot review it. This court does not review any evidence that is not in the record. *Weston v. State*, 265 Ark. 58, 576 S.W. 2d 705 (1979); *Bridger v. State*, 264 Ark. 789, 575 S.W. 2d 154 (1979). The judgment must be affirmed.

Affirmed.
