Cite as 2011 Ark. 477

SUPREME COURT OF ARKANSAS

No. CR 09-942

JOSEPH AKIN APPELLANT V. STATE OF ARKANSAS APPELLEE	**Opinion Delivered** November 10, 2011 APPEAL FROM THE POPE COUNTY CIRCUIT COURT, CR 2008-200, HON. DENNIS C. SUTTERFIELD, JUDGE AFFIRMED.

PER CURIAM

In November 2008, appellant Joseph Akin entered a negotiated guilty plea to a charge of possession of a controlled substance with intent to deliver for which a sentence of 144 months' imprisonment was imposed to be followed by an eighty-four-month suspended imposition of sentence. Pursuant to Arkansas Rule of Criminal Procedure 37.1 (2008), appellant timely filed in the trial court a petition for postconviction relief, alleging that he did not enter the guilty plea voluntarily. After a hearing, the trial court denied the motion. Appellant brings this appeal, arguing that the trial court erred in finding that his plea was not coerced. We affirm.

Appellant was charged with possession of a controlled substance with intent to deliver after 440 pounds of marijuana were found hidden in his vehicle during a traffic stop. The trial court denied appellant's motion to suppress the contraband discovered in the search. Thereafter, appellant pled guilty to the aforementioned offense.

In his petition for postconviction relief, appellant asserted that his plea was involuntary because of the circuit court's erroneous denial of his motion to suppress. Appellant maintained

that he advanced the motion to suppress in reliance on *Lilley v. State*, 362 Ark. 436, 208 S.W.3d 785 (2005), and that, subsequent to his guilty plea, the Arkansas Court of Appeals relied on *Lilley* to reverse the denial of a motion to suppress on facts similar to those found in his case. *See Bedsole v. State*, 104 Ark. App. 253, 290 S.W.3d 607 (2009). At the hearing, appellant explained that he had been confident that he would prevail on the motion to suppress and that he was dismayed when the circuit court did not rule in his favor. He said that he decided to forego a trial, and an appeal if convicted, out of concern that the jury might impose the maximum sentence, which, given his ill health, would result in a virtual life sentence. Appellant also stated that he lacked faith in our appellate courts, but that his faith had since been restored with the decision in *Bedsole*. He claimed that he would not have pled guilty had *Bedsole* been decided at the time of his plea. In denying appellant's petition, the circuit court found that appellant's fear of a more severe sentence being imposed after a trial did not render his plea involuntary.

We have frequently held that, where, as here, a defendant pleads guilty, the only claims cognizable in a proceeding pursuant to Rule 37.1 are those that allege that the plea was not made voluntarily and intelligently or that it was entered without effective assistance of counsel. *See Gonder v. State*, 2011 Ark. 248, 382 S.W.3d 674 (per curiam); *Jamett v. State*, 2010 Ark. 28, 358 S.W.3d 874; *French v. State*, 2009 Ark. 443 (per curiam); *State v. Herred*, 332 Ark. 241, 964 S.W.2d 391 (1998). This court does not reverse a denial of postconviction relief unless the trial court's findings are clearly erroneous. *Croy v. State*, 2011 Ark. 284, 383 S.W.3d 367 (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. *Payton v. State*, 2011 Ark. 217 (per curiam).

On appeal, appellant contends that the erroneous denial of his motion to suppress placed him in an untenable position that compelled him to plead guilty, thereby rendering his plea involuntary. The argument is without merit. Appellant's testimony at the hearing reveals that his decision to plead guilty was motivated by the fear of receiving a harsher sentence had he taken the case to a jury. However, it is well settled that a plea of guilty that is induced by the possibility of a more severe sentence does not amount to coercion. *Thomas v. State*, 277 Ark. 74, 639 S.W.2d 353 (1982); *Williams v. State*, 273 Ark. 371, 620 S.W.2d 277 (1981); *Adams v. State*, 253 Ark. 296, 485 S.W.2d 746 (1972); *Todd v. State*, 253 Ark. 283, 485 S.W.2d 533 (1972). Appellant's testimony also reflects that the decision to forego a trial and, if convicted, an appeal of the suppression issue was a conscious choice that he made and that his desire to overturn his plea was borne out of remorse that his decision may not have proven wise. However, mistaken judgment is not a basis for setting aside a plea of guilty. *Mitchell v. State*, 271 Ark. 512, 609 S.W.2d 333 (1980) (citing *McMann v. Richardson*, 397 U.S. 1441 (1970)). For these reasons, we cannot conclude that the circuit court clearly erred in denying appellant's request for postconviction relief.

Affirmed.