

Willie Ray MACKEY v. STATE of Arkansas

CR 85-83

690 S.W.2d 353

Supreme Court of Arkansas
Opinion delivered June 3, 1985

1. CRIMINAL PROCEDURE — POSTCONVICTION RELIEF — ISSUE NOT RAISED AT TRIAL IS WAIVED UNLESS IT RENDERS JUDGMENT VOID. — An issue that could have been raised at trial and on the record on direct appeal in accordance with the controlling rules of procedure is considered waived, unless it presents a question so fundamental as to render the judgment void.
2. CRIMINAL PROCEDURE — POSTCONVICTION RELIEF — DENIAL OF FAIR TRIAL BECAUSE JURY WAS “DEATH QUALIFIED” IS NOT SUFFICIENT TO RENDER JUDGMENT VOID. — Whether or not petitioner was denied a fair trial as guaranteed by the Constitution of the United States because the jury at his trial was “death qualified,” is not a sufficient question to render the judgment in his case void.

Petition to Proceed in Garland Circuit Court Pursuant to Arkansas Criminal Procedure Rule 37; denied.

Q. Byrum Hurst, Jr., for petitioner.

Steve Clark, Att’y Gen., by: *Theodore Holder*, Asst. Att’y Gen., for appellee.

PER CURIAM. Petitioner Willie Ray Mackey was charged with capital felony murder and found guilty by a jury of first degree murder. He was sentenced to life imprisonment in the Arkansas Department of Correction. We affirmed. *Mackey v. State*, 279 Ark. 307, 651 S.W.2d 82 (1983). Petitioner now seeks permission to proceed in circuit court for postconviction relief pursuant to Ark. R. Crim. P. 37. The sole ground for relief is that he was denied a fair trial as guaranteed by the Constitution of the United States because the jury at his trial was “death qualified.”

[1, 2] This Court has held that death-qualified juries are constitutional. *Rector v. State*, 280 Ark. 385, 659 S.W.2d 168 (1983); *Hendrickson v. State*, 285 Ark. 462, 688 S.W.2d 295 (1985). Even if we had not so held, petitioner is not entitled to raise the issue now for the first time. An issue which could have been raised at trial and on the record on direct appeal in accordance with the controlling rules of procedure is considered waived, unless it presents a question so fundamental as to render the judgment void. *Hill v. State*, 278 Ark. 194, 644 S.W.2d 282; *Collins v. State*, 271 Ark. 825, 611 S.W.2d 182 (1981); *Moore v. Illinois*, 408 U.S. 786 (1972); *Stembridge v. Georgia*, 343 U.S. 541 (1952); *Hulsey v. State*, 268 Ark. 312, 595 S.W.2d 934, reh. denied, 268 Ark. 315, 599 S.W.2d 729 (1980); *Williams v. Edmondson*, 257 Ark. 837, 250 S.W.2d 260 (1975); *Orman v. Bishop*, 245 Ark. 887, 435 S.W.2d 440 (1968). The question advanced by petitioner is not sufficient to render the judgment in his case void.

Petition denied.
