

SUPREME COURT OF ARKANSAS

No. CR 10-313

DWIGHT JACKSON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered February 2, 2012

PRO SE APPEAL FROM THE LITTLE
RIVER CIRCUIT COURT
[NO. CR 2009-106]

HON. TOM COOPER, JUDGE

AFFIRMED.

PER CURIAM

Appellant Dwight Jackson brings the instant pro se appeal from an order of the Little River County Circuit Court denying his petition for postconviction relief filed pursuant to Arkansas Rule of Criminal Procedure 37.1 (2011). Because appellant has not provided a record sufficient for our review of the points that he would raise on appeal, we affirm.

Appellant pled guilty to one count of delivery of a counterfeit substance (cocaine) and was sentenced by the circuit court to ninety-six months' imprisonment. Imposition of an additional sentence of twenty-four months was suspended.

Appellant filed the Rule 37.1 petition asserting that he was entitled to postconviction relief on four bases, as follows: (1) he did not sign his plea agreement in open court and had been coerced into signing the agreement through threats to imprison his grandfather; (2) his plea of guilty was not made voluntarily or knowingly, as it was made on the advice of counsel who acted ineffectively because counsel advised appellant to enter a guilty plea when he was innocent and failed to advise appellant of defects in the bill of information resulting from the

determination that the substance delivered was not cocaine; (3) his plea was not made knowingly or voluntarily because he was not advised that he would be ineligible for parole; (4) the plea statement that he signed did not contain the mandatory range of punishment, and the trial court did not explain the range of punishment to him. His four points on appeal reassert those same issues.

The circuit court entered an order on January 5, 2010, denying the petition that appellant had filed. Therein, the circuit court found that appellant had signed his plea statement and, on the record, indicated that his plea was not induced by force, threat, or promise. Further, the circuit court found that appellant acknowledged entering his plea with the understanding that neither his attorney, nor the prosecuting attorney or court, made any representations about his release from confinement prior to completion of the sentence. Finally, apparently addressing both the second and fourth claims in the petition, the circuit court found that appellant was notified of the possible range of punishment when the State orally amended the charge from possession of crack cocaine to possession of a counterfeit substance with intent to deliver. The circuit court concluded that appellant failed to state grounds warranting relief pursuant to Rule 37.1.

Each of the issues presented in appellant's petition turns on what occurred when his plea was accepted. The trial court based its rulings on findings made concerning what transpired when the court accepted appellant's plea. Yet the record does not contain a transcript of the plea hearing.

A petitioner who seeks relief in this court has the burden to bring up a sufficient record upon which to grant relief. *Daniels v. State*, 2009 Ark. 607 (per curiam). It is well settled that an

appellant bears the burden of producing a record that demonstrates error. *Id.*; see also *Johnson v. State*, 2011 Ark. 455 (per curiam); *Barnes v. State*, 2011 Ark. 153 (per curiam); *Polivka v. State*, 2010 Ark. 152, 362 S.W.3d 918; *Meraz v. State*, 2010 Ark. 121 (per curiam). When the appellant fails to meet his burden, this court has no choice but to affirm the trial court's decision. *Davidson v. State*, 363 Ark. 86, 210 S.W.3d 887 (2005).

Each of appellant's issues that he would raise concerns allegations of what was said by him or to him during the plea hearing, and the trial court referenced statements apparently made by appellant, the court, and others during the plea hearing. We are unable to conduct an adequate review without a more complete record. Accordingly, we affirm the denial of postconviction relief.

Affirmed.