

Cite as 2012 Ark. 194

SUPREME COURT OF ARKANSAS

No. CR 11-1038

RONALD D. LITTLE
APPELLANT

v.

STATE OF ARKANSAS
APPELLEE**Opinion Delivered** May 3, 2012PRO SE MOTIONS FOR EXTENSION
OF TIME AND PETITION FOR WRIT
OF CERTIORARI [PRO SE APPEAL
FROM THE SALINE COUNTY
CIRCUIT COURT, CR 2008-615, CR
2010-126, HON. GRISHAM PHILLIPS,
JUDGE]APPEAL DISMISSED; MOTIONS AND
PETITION MOOT.**PER CURIAM**

Appellant Ronald D. Little pled no contest to one charge of manslaughter and one charge of second-degree battery, for which a cumulative sentence of 240 months' incarceration in the Arkansas Department of Correction was imposed. Subsequently, appellant filed in the circuit court a timely, verified pro se petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2011). This petition was denied without an evidentiary hearing, and appellant timely filed an appeal from the circuit court's denial of relief.

Now before us are appellant's pro se motions for extension of time and his petition for writ of certiorari. Because it is clear that appellant could not prevail if his appeal were allowed to proceed, we dismiss the appeal. *See Carroll v. State*, 2012 Ark. 100 (per curiam). This court has consistently held that a postconviction appeal will not be permitted to go forward where it is clear that the appellant could not prevail. *Velcoff v. State*, 2011 Ark. 267 (per curiam); *Kelley v. State*, 2011 Ark. 175 (per curiam); *Delamar v. State*, 2011 Ark. 87 (per curiam). The motions and

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petition are accordingly moot.

This court does not reverse a denial of postconviction relief unless the circuit court's findings are clearly erroneous. *Strain v. State*, 2012 Ark. 42 (per curiam) (citing *Reed v. State*, 2011 Ark. 115 (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. *Id.*

In his original Rule 37.1 petition, appellant raised the following claims of ineffective assistance of counsel: (1) trial counsel was not a member of the Arkansas Bar Association; (2) trial counsel was improperly paid over \$10,000 from appellant's Social Security benefits; (3) trial counsel failed to request appellant's medical records from the Social Security Administration or to subpoena appellant's doctors, and both of these actions would have helped to establish that appellant suffered from mental illness; (4) trial counsel failed to raise a speedy-trial issue. Additionally, appellant argued that he was denied due process of law when he was allowed to enter a plea after the speedy-trial period had expired, that he was mentally incompetent to enter a plea, and that the sentence imposed was illegal.

We have consistently 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 Jamett v. State*, 2010 Ark. 28, 358 S.W.3d 874 (per curiam); *French v. State*, 2009 Ark. 443 (per curiam). There is no distinction between guilty pleas and pleas of no contest for purposes of Rule 37.1. *See Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996). Thus, appellant's due-process

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and illegal-sentence claims are noncognizable.

When considering an appeal from a circuit court's denial of a Rule 37.1 petition, the sole question presented is whether, based on a totality of the evidence under the standard set forth by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984), the circuit court clearly erred in holding that counsel's performance was not ineffective. *Anderson v. State*, 2011 Ark. 488, ___ S.W.3d ___; *Biddle v. State*, 2011 Ark. 358 (per curiam). A defendant making an ineffective-assistance-of-counsel claim must show that his counsel's performance fell below an objective standard of reasonableness and that this deficient performance prejudiced the defense. *Heard v. State*, 2012 Ark. 67 (per curiam). In order for appellant to show that he was specifically prejudiced by counsel's deficient assistance prior to, or during the entry of, a guilty plea, appellant must demonstrate a reasonable probability that, but for counsel's errors, appellant would not have pled guilty and would have insisted on going to trial. *See id.*

As the circuit court noted in its order denying postconviction relief, three of appellant's ineffective-assistance claims failed to allege that he would not have pled guilty had counsel not made the asserted errors. This failure is fatal to an ineffective-assistance claim stemming from a guilty plea. *See, e.g., Gonder v. State*, 2011 Ark. 248 (per curiam). Thus, we cannot say that the circuit court erred in denying relief on appellant's claims regarding trial counsel's membership in the Arkansas Bar Association, counsel's receipt of \$10,000 from appellant's Social Security funds, and counsel's failure to argue a speedy-trial issue.

Only appellant's third claim—that counsel was ineffective for failing to subpoena certain doctors and their medical records—even referenced counsel's failure as it applied to appellant's

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plea, claiming that the failure “resulted in the coerced plea that [appellant] was forced to enter into.” We have consistently held that, to establish ineffective assistance based on a failure to call a witness or present certain evidence, a Rule 37.1 petitioner must name the witness, provide a summary of that witness’s testimony, and establish that the testimony would have been admissible into evidence. *See Abernathy v. State*, 2012 Ark. 59 (per curiam). In its order denying relief, the circuit court found that appellant’s claim failed to identify the doctors who should have been subpoenaed or to summarize what their testimony would have been. The circuit court was therefore not clearly erroneous in denying relief on this argument.

Along with his ineffective-assistance claims, appellant raised a claim that his plea was not knowingly and voluntarily entered due to his own mental incompetence. According to his original petition, appellant told several people prior to trial that he received Social Security disability “for mental incompetency,” and the doctors “who certified [appellant] incompetent were never consulted with” prior to appellant’s plea. Eventually, appellant alleged, the conditions of his confinement resulted in his agreeing to plead no contest, but he was not competent to enter such a plea.

We have held that, even where a Rule 37.1 petitioner is able to document a history of mental illness or show that counsel could have argued incompetence, that showing, without more, is not sufficient to warrant postconviction relief. *Camacho v. State*, 2011 Ark. 235 (per curiam). A petitioner who raises his competency for the first time in a petition for postconviction relief must overcome the presumption that he was competent to stand trial by pointing to specific evidence that would demonstrate that, at the time of his trial or the entering

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of his guilty plea, the petitioner lacked the ability to consult with his lawyer with a reasonable degree of rational understanding and lacked a rational, as well as factual, understanding of the proceedings against him. *See generally Whitham v. State*, 2011 Ark. 28 (per curiam) (citing *Thessing v. State*, 365 Ark. 384, 230 S.W.3d 526 (2006)).

The circuit court noted that appellant's competency had been evaluated by three mental-health professionals prior to his entering a guilty plea and that all three had concluded that appellant was competent. Relying on our decision in *Camacho*, the circuit court ultimately held that appellant's contention about a history of mental-health problems, unaccompanied by any specific evidence that would call into question his competency to enter a plea, was insufficient to warrant postconviction relief. Based on appellant's lack of any reference to specific doctors or specific evidence that would support his contentions, we cannot say that the circuit court was clearly erroneous in this decision.

Inasmuch as the circuit court's denial of postconviction relief was not clearly erroneous, it is clear that appellant could not prevail if his appeal were allowed to proceed. Therefore, we dismiss the appeal. Appellant's motions and petition are accordingly moot.

Appeal dismissed; motions and petition moot.