

SUPREME COURT OF ARKANSAS

No. CR 12-156

HILLIARD NELSON

PETITIONER

v.

HON. DON GLOVER, CIRCUIT JUDGE
RESPONDENT**Opinion Delivered** August 14, 2012PRO SE PETITION FOR WRIT OF
MANDAMUS [DESHA COUNTY
CIRCUIT COURT, CR 90-06]PETITION MOOT.**PER CURIAM**

In 1990, a jury found petitioner Hilliard Nelson guilty of first-degree murder and sentenced him to life imprisonment. This court affirmed. *Nelson v. State*, 306 Ark. 456, 816 S.W.2d 159 (1991). Appellant subsequently sought postconviction relief under Arkansas Rule of Criminal Procedure 37.1 (1993). The petition was denied, and this court affirmed the order. *Nelson v. State*, 344 Ark. 407, 39 S.W.3d 791 (2001) (per curiam).

On February 19, 2008, petitioner filed in the trial court a pleading, asking the court to “rule on the merits of the issues” under the “nunc pro tunc rule.” On February 23, 2012, petitioner filed in this court a pro se petition for writ of mandamus, contending that Circuit Judge Don Glover had not acted on the February 19, 2008 pleading in a timely manner.¹

In response to the mandamus petition, Judge Glover entered an order on March 2, 2012, in which he found that the February 19, 2008 pleading was in reference to a pretrial motion filed

¹In 2009, petitioner tendered to this court a pro se petition for writ of mandamus pertaining to the February 19, 2008 pleading with a motion seeking leave to file the mandamus petition without the certified record required to file such petitions. The motion was denied. *Nelson v. Glover*, 2009 Ark. 148 (unpublished per curiam).

on July 23, 1990, and that petitioner was essentially seeking a ruling on the earlier motion so that he could then argue on appeal that the trial court erred in failing to set aside the conviction where the prosecutor was permitted to amend the charges prior to trial, but after jury selection.² The circuit court held that it no longer had jurisdiction to grant the relief sought, and the mandamus petition filed in this court should be dismissed. We noted that the mere fact that a pleading may lack merit or be entirely frivolous is not good cause to delay ruling on it, and we requested a response from Judge Glover setting out the reasons for the delay. *Nelson v. Glover*, 2012 Ark. 207 (per curiam).

Judge Glover responded to this court's ruling on May 17, 2012, and filed an amended response on May 24, 2012. In the response and amended response, Judge Glover averred that the delay was due to the fact that the February 19, 2008 pleading was not contained in the record, and Judge Glover was unaware of the pleading until petitioner filed the instant petition for writ of mandamus. In support of this, Judge Glover pointed to a letter from the Desha County Circuit Clerk that informed petitioner that the clerk's office was not in possession of the February 19, 2008 pleading. Judge Glover further explained that his March 2, 2012 order was entered within two weeks of his becoming aware of the February 19, 2008 pleading.

Additionally, Judge Glover noted that petitioner had filed a response to Judge Glover's March 2, 2012 order, and in that response, petitioner claimed that the February 19, 2008 pleading sought a ruling on petitioner's original petition for postconviction relief, not on the July

²Petitioner attempted to raise this argument in his appeal from the circuit court's denial of postconviction relief, but this court would not consider it because the argument had not been presented to the circuit court and, even if meritorious, the issue was not so fundamental as to void the conviction. *Nelson*, 344 Ark. at 415, 39 S.W.3d at 797.

23, 1990 motion. Judge Glover noted that the court had held a hearing on the petition for postconviction relief on January 27, 1997, and had ruled on the claims raised therein, and petitioner had already appealed that ruling to this court. *See Nelson*, 344 Ark. 407, 29 S.W.3d 791.

Based on the foregoing, we are convinced that Judge Glover's failure to act upon petitioner's motion was simply due to a clerical error, and we use this opportunity to remind all Arkansas judges that the prompt resolution of all matters before a court is vital to the administration of justice. *Higgins v. Proctor*, 2009 Ark. 496 (per curiam). To that end, we again urge all judicial districts to ensure that a system is in place whereby judges are made aware of all filings in their courts. *See McCoy v. Phillips*, 357 Ark. 368, 166 S.W.3d 564 (2004) (per curiam).

We turn then to the merits of petitioner's petition for writ of mandamus. A writ of mandamus is appropriate where (1) the duty to be compelled is ministerial and not discretionary; (2) the petitioner has shown a clear and certain right to the relief sought; (3) the petitioner lacks any other adequate remedy. *Mitchael v. State*, 2012 Ark. 256 (per curiam) (citing *Strain v. State*, 2012 Ark. 184 (per curiam)). Certainly, Judge Glover, like all judges, had a ministerial duty to promptly rule on petitioner's motion. *See Goodwin v. Keaton*, 2012 Ark. 137 (per curiam). However, petitioner has not demonstrated that he has a clear and certain right to the relief that he seeks. To the extent that he is seeking a ruling on the merits of the July 23, 1990 motion, he has failed to demonstrate that he is entitled to anything beyond having Judge Glover act upon the motion as directed by the relevant rules of criminal procedure. *See Carter v. Chandler*, 2012 Ark. 252 (per curiam). Judge Glover fulfilled this duty with the entry of his March 2, 2012 order. Alternatively, to the extent that petitioner is seeking a ruling on the merits of his original petition

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for postconviction relief, he has already received a hearing on that petition and has appealed the circuit court's decision on the petition to this court. *See Nelson*, 344 Ark. 407, 29 S.W.3d 791. The time for seeking additional rulings on that petition has long since passed. *See Watkins v. State*, 2010 Ark. 156 (per curiam) (noting that once the appeal transcript is lodged in the appellate court, the circuit court loses jurisdiction to enter any additional rulings).

Regardless of whether the prayer for relief in petitioner's 2008 pleading pertains to his original postconviction petition or to the July 23, 1990 motion, it is clear that both have been acted upon by the circuit court. Where a circuit court has acted on the underlying motion, a petition for writ of mandamus is moot. *See White v. Glover*, 2010 Ark. 166 (per curiam) (citing *Strong v. Thyer*, 2010 Ark. 19 (per curiam)).

Petition moot.

Hilliard Nelson, pro se petitioner.

Dustin McDaniel, Att'y Gen., by: *Karen Virginia Wallace*, Ass't Att'y Gen., for respondent.