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SUPREME COURT OF ARKANSAS

No. CR-16-1101

BRUCE WAYNE BROWN

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered December 14, 2017

PRO SE APPEAL FROM THE
GARLAND COUNTY CIRCUIT COURT
[NO. 26CR-10-272]

HONORABLE MARCIA R.
HEARNSBERGER, JUDGE

AFFIRMED.

ROBIN F. WYNNE, Associate Justice

Appellant Bruce Wayne Brown brings this appeal from the denial of a pro se petition and amended petition for postconviction relief filed in the trial court pursuant to Rule 37.1 (2016) of the Arkansas Rules of Criminal Procedure. Brown raises one point on appeal, contending that the trial court failed to specifically address all the claims raised in his petition and amended petition and therefore committed reversible error pursuant to Rule 37.3(a). Brown raised multiple claims for postconviction relief based on ineffective assistance of counsel, and the trial court conducted an evidentiary hearing. At that hearing, Brown did not specifically reassert all the claims set forth in the petitions. A recitation of the claims raised in the petitions and addressed at the hearing is unnecessary as Brown has waived the substantive issues set forth in his pro se petitions as well as those issues raised during the hearing. We therefore affirm.

The record demonstrates that the trial court conducted an evidentiary hearing and ruled on some, but not all, of Brown's allegations of attorney error. Specifically, the record

reflects that following the hearing, the trial court issued a detailed letter explaining its findings and conclusions and subsequently entered an order that reiterated those findings and conclusions with respect to the majority of Brown's claims. The trial court found that the attorney errors complained of by Brown were either matters of trial strategy or were based on issues that had been addressed on direct appeal, and it concluded that Brown had otherwise failed to meet the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). Finally, the trial court denied claims raised by Brown in his petitions that Brown had not reasserted or supported by testimony or evidence during the course of the hearing. Brown did not file a motion or other pleading asking the trial court to enter rulings on issues which Brown believed had been erroneously omitted from the trial court's order denying relief. Based on the above, Brown's reliance on Rule 37.3(a) for reversal is misplaced as the facts presented here are not controlled by Rule 37.3(a), which is pertinent to a trial court's summary disposition of a postconviction petition without conducting a hearing.

Under Rule 37.3(a) the trial court is obligated to enter findings specifying the parts of the record that form the basis for the trial court's decision. *Smith v. State*, 300 Ark. 291, 295, 778 S.W.2d 924, 926 (1989). However, we may make an exception to the written-findings requirement of Rule 37.3(a) in those cases in which our own examination of the record demonstrates conclusively that the trial court was correct in denying relief. *Id.* On the other hand, where an evidentiary hearing is held pursuant to Rule 37.3(c), we have made it clear that the requirement of written findings of fact is mandatory and applies to any issue upon which a Rule 37 hearing is held. *Id.* Here, the trial court conducted an

evidentiary hearing and issued written findings on those issues it considered to have been raised during the course of the hearing.

Rule 37.3(c) of the Arkansas Rules of Criminal Procedure provides that, following a hearing on the petitioner's request for postconviction relief, the trial court "shall determine the issues and make written findings of fact and conclusions of law with respect thereto." *Beshears v. State*, 340 Ark. 70, 73, 8 S.W.3d 32, 34 (2000). When a trial court's order contains written findings on some, but not all, of the claims raised in proceedings below, we have held that it is the appellant's obligation to obtain a ruling on any omitted issue in order to preserve those issues for appeal. *Id.* We have specifically held that a request that the trial court modify its order to include an omitted issue is not a request for rehearing that is prohibited by Rule 37.2(d). *Id.* We have said on numerous occasions that the failure to obtain a ruling below bars review of the issue on appeal. *State v. Rainer*, 2014 Ark. 306, at 15–16, 440 S.W.3d 315, 324; *see also Oliver v. State*, 323 Ark. 743, 918 S.W.2d 690 (1996). If Brown believed that the trial court had erroneously failed to rule on issues raised during the hearing, it was his obligation to request rulings on those issues. By failing to do so, Brown has waived any issues that he now alleges should have been ruled on by the trial court.

Furthermore, because Brown fails to argue the merits of the claims on which the trial court ruled, those issues are considered abandoned. Arguments made to the trial court but not included in the arguments on appeal are considered abandoned. *Jordan v. State*, 356 Ark. 248, 256, 147 S.W.3d 691, 696 (2004) (citing *Echols v. State*, 344 Ark. 513, 42 S.W.3d 467 (2001)).

Affirmed.

Bruce Wayne Brown, pro se appellant.

Leslie Rutledge, Att’y Gen., by: *Rebecca Bailey Kane*, Ass’t Att’y Gen., for appellee.