

Cite as 2010 Ark. 275

SUPREME COURT OF ARKANSAS

No. CR08-1189

MAX EASTIN,

APPELLANT,

VS.

STATE OF ARKANSAS,

APPELLEE,

Opinion Delivered June 3, 2010

APPEAL FROM THE CLARK
COUNTY CIRCUIT COURT,
NO. CR2006-36,
HON. JOHN ALEXANDER THOMAS,
JUDGE,

AFFIRMED.

JIM HANNAH, Chief Justice

Appellant Max Eastin appeals the circuit court's denial of his petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1. In 2005, Eastin was convicted of manufacturing methamphetamine, use of paraphernalia to manufacture methamphetamine, possession of a controlled substance, and simultaneous possession of drugs and a firearm, for which he was sentenced to a total of 480 months' imprisonment. Eastin appealed to the Arkansas Court of Appeals, which reversed and remanded, concluding the circuit court erred in denying Eastin's motion to suppress evidence because the search warrant was based on information from a confidential informant whose reliability was not established and that the circuit court erred in admitting a transcript of appellant's statement when the original tape of his statement no longer existed. *Eastin v. State*, 97 Ark. App. 81, 244 S.W.3d 718 (2006). The State filed a petition for review, which we granted. This court affirmed the circuit court and reversed the court of appeals. *Eastin v. State*, 370 Ark. 10, 257 S.W.3d 58

(2007). We held that Eastin failed to preserve his arguments regarding sufficiency of the evidence and his motion to suppress, that Eastin failed to show how the confidential informant's identity was necessary to his defense, and that, while the circuit court may well have erred in admitting the transcript into evidence when the original recording was unavailable, any error was harmless. *Id.*

Eastin then filed a petition for postconviction relief under Rule 37.1. The petition asserted that counsel provided ineffective assistance by failing to preserve arguments as to three issues: sufficiency of the evidence, suppression of the search evidence, and the circuit court's failure to require disclosure of the confidential informant's identity.

In the order denying the petition, the circuit court found that there was sufficient evidence to support the verdict and that, even if counsel had been ineffective in failing to make a specific motion for directed verdict, the evidence in the case was such that the circuit court would have denied the motion. The circuit court also found that, because there was a factual basis before the trial court to demonstrate the reliability of the informant, there was no need to consider whether Eastin suffered prejudice.

On appeal, Eastin contends that the circuit court erred in denying his petition for postconviction relief. Eastin asserts that, by failing to make a proper record and otherwise failing to make proper arguments at trial, trial counsel was ineffective as a matter of law. We affirm the circuit court's denial of Eastin's petition for postconviction relief.

In an appeal from a trial court's denial of postconviction relief on a claim of ineffective assistance of counsel, the question presented is whether, under the standard set forth by the

United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984), and based on the totality of the evidence, the trial court clearly erred in holding that counsel's performance was not ineffective. *Small v. State*, 371 Ark. 244, 264 S.W.3d 512 (2007) (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.*

Actual ineffectiveness claims alleging deficiency in attorney performance are subject to a general requirement that the defendant affirmatively prove prejudice. *State v. Barrett*, 371 Ark. 91, 263 S.W.3d 542 (2007). Under the *Strickland* test, a claimant must show that counsel's performance was deficient, and the claimant must also show that this deficient performance prejudiced his defense so as to deprive him of a fair trial. *Walker v. State*, 367 Ark. 523, 241 S.W.3d 734 (2006) (per curiam). As to the prejudice requirement, a petitioner must show that there is a reasonable probability that the fact-finder's decision would have been different absent counsel's errors. *Sparkman v. State*, 373 Ark. 45, 281 S.W.3d 277 (2008). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. *Id.*

We first address Eastin's argument regarding trial counsel's failure to preserve his challenge to the sufficiency of the evidence. In *Eastin*, we declined to address Eastin's sufficiency argument because trial counsel failed to make a specific directed-verdict motion. 370 Ark. at 15, 257 S.W.3d at 63. In the instant case, Eastin contends that trial counsel was ineffective because he failed to preserve the sufficiency challenge for appeal. But Eastin has

failed to provide a basis upon which trial counsel could have presented a meritorious motion. He did not identify any element the State failed to prove or that trial counsel might have successfully challenged. Eastin's bare assertions as to prejudice were merely conclusory allegations, which cannot form the basis of postconviction relief. *E.g., Jackson v. State*, 352 Ark. 359, 105 S.W.3d 352 (2003).

Eastin next asserts that trial counsel was ineffective because he failed to preserve a challenge to the circuit court's denial of his motion to suppress. Specifically, Eastin asserts that trial counsel failed to preserve the argument that the evidence seized from his houseboat should have been suppressed because the search was based on an invalid search warrant with no facts bearing on the informant's reliability. In support of his argument that the denial of his petition for postconviction relief should be reversed, Eastin states:

This court declared, as a matter of law, that Mr. Eastin's trial counsel failed to properly preserve for appellate review several key issues, issues which the court of appeals had ruled should be decided in favor of Mr. Eastin. Therefore, Mr. Eastin submits that this court's own opinion constitutes a declaration that his trial counsel was, as a matter of law, ineffective because his trial counsel failed to take those steps which a competent trial lawyer should have taken. But for trial counsel's negligence, the appellate court would have reversed Mr. Eastin's conviction and he would have had a new trial at which the State would not have had available any evidence seized from Mr. Eastin's houseboat, nor would it have been able to use the transcript of his so-called confession.

In response to Eastin's argument, the State claims that Eastin has failed to meet his burden for reversal because he has not shown that the outcome would have been different if trial counsel had preserved this claim. We agree.

We begin by noting that, in *Eastin*, this court did not declare, as a matter of law, that trial counsel was ineffective because he failed to preserve arguments for appeal. We made no determination regarding the merits of Eastin's arguments; therefore, we could not have concluded that trial counsel was ineffective. See, e.g., *Camargo v. State*, 346 Ark. 118, 128, 55 S.W.3d 255, 262–63 (2001) (stating that trial counsel cannot be ineffective for failing to make arguments that are meritless).

Here, Eastin has failed to provide a basis upon which trial counsel could have presented a meritorious argument regarding the informant's reliability. Further, Eastin fails to develop his argument regarding how he was prejudiced by trial counsel's failure to preserve the challenge to the informant's reliability. This court does not research or develop arguments for appellants. E.g., *Britt v. State*, 2009 Ark. 569, 349 S.W.3d 290 (per curiam).

Finally, to the extent that Eastin asserts any other ineffective-assistance claims, this court does not address them. Eastin obtained rulings only on his sufficiency argument and his informant-reliability argument. Failure to obtain a ruling on an issue when the circuit court denies a petition for postconviction relief precludes appellate review. E.g., *Matthews v. State*, 333 Ark. 701, 970 S.W.2d 289 (1998).

In sum, the circuit court did not clearly err in finding that trial counsel's performance was not ineffective. Accordingly, we affirm.

Affirmed.

CORBIN, J., not participating.