

SUPREME COURT OF ARKANSAS

No. CR 86-183

KENNY HALFACRE
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered October 7, 2010

PRO SE PETITION TO REINVEST
JURISDICTION IN THE TRIAL
COURT TO CONSIDER A
PETITION FOR POSTCONVICTION
RELIEF PURSUANT TO ARKANSAS
RULE OF CRIMINAL PROCEDURE
37.1 [CIRCUIT COURT OF PULASKI
COUNTY, CR 85-1579]

PETITION DISMISSED.

PER CURIAM

Now before us is petitioner Kenny Halfacre's pro se petition to reinvest jurisdiction in the trial court to consider a petition under the version of Arkansas Rule of Criminal Procedure 37.1 in effect when he became eligible to file a petition.¹ The petition pertains to a judgment of conviction entered in 1986 wherein petitioner was found guilty of aggravated robbery and sentenced as a habitual offender to life imprisonment under the statute in effect at the time of the crime. *See* Ark. Stat. Ann. §§ 41-2102(a) and 41-2103 (Repl.1977). We affirmed. *Halfacre v. State*, 292 Ark. 329, 731 S.W.2d 182 (1987).

Rule 37, as it applied to petitioners with judgments entered before July 1, 1989, which had been affirmed on appeal, requires the petitioner to obtain leave from this court

¹For clerical purposes, the petition was filed under the docket number assigned to the direct appeal of the judgment when it was lodged in this court in 1986.

before filing a postconviction petition in the trial court.² Rule 37.2, as it applies to petitioner, provides that a petition under the rule is untimely if not filed within three years of the date of commitment unless the petitioner states some ground for relief which, if found meritorious, would render the judgment of conviction absolutely void, *i.e.*, a complete nullity. *Travis v. State*, 286 Ark. 26, 688 S.W.2d 935 (1985); *Collins v. State*, 271 Ark. 825, 611 S.W.2d 182 (per curiam), *cert. denied*, 452 U.S. 973 (1981). Trial error, even error of constitutional dimension, is not sufficient to warrant granting relief under Rule 37.2 if the issue was raised, or could have been raised, at trial and on the record on appeal. *Taylor v. State*, 297 Ark. 627, 764 S.W.2d 447 (1989) (per curiam). A claim of ineffective assistance of counsel does not entitle the petitioner to postconviction relief if not of such magnitude that counsel's conduct rendered the judgment a complete nullity. *Martin v. State*, 277 Ark. 175, 639 S.W.2d 738 (1982) (per curiam). The burden is on the petitioner to establish that there is a ground sufficient to void the judgment of conviction. *Travis*, 286 Ark. 26, 688 S.W.2d 935.

Petitioner here contends that he is entitled to postconviction relief on the ground that there was insufficient evidence presented at trial to find that he was an habitual offender. The claim could have been raised at trial, and it is not a claim sufficient, if proven, to void the judgment absolutely.

²Criminal Procedure Rule 37 was abolished by this court effective July 1, 1989. *In the Matter of the Abolishment of Rule 37 and the Revision of Rule 36 of the Arkansas Rules of Criminal Procedure*, 299 Ark. App'x 573, 770 S.W.2d 148 (1989). Rule 37 was reinstated in a revised form on January 1, 1991. *In the Matter of the Reinstatement of Rule 37 of the Arkansas Rules of Criminal Procedure*, 303 Ark. App'x 746, 797 S.W.2d 458 (1990). The revised rule does not require petitioners to gain leave of this court before proceeding in the trial court.

We further note that the instant petition is the third request filed in this court seeking Rule 37.1 relief pertaining to the criminal case at issue. Under the applicable provision of the rule, petitioner was required to raise all issues for postconviction relief in the original petition unless that petition was denied without prejudice. Ark. R. Crim. P. 37.2(b) (1985); *Ruiz v. State*, 280 Ark. 190, 655 S.W.2d 441 (1983) (per curiam). Petitioner's original petition filed in this court in 1987 was not denied without prejudice to filing a subsequent petition. The second petition was denied by this court in 2007 as being a prohibited subsequent petition. Petitioner was therefore prohibited from filing another petition under the rule, and the instant petition is subject to dismissal on that basis.

Petition dismissed.