

**SUPREME COURT OF ARKANSAS**

No. CR02-213

KENNETH R. ISOM,

APPELLANT,

VS.

STATE OF ARKANSAS,

APPELLEE,

**Opinion Delivered 4-7-11**

APPEAL FROM THE CIRCUIT COURT OF DREW COUNTY, CRIMINAL DIVISION, NO. CR2001-52-2, HON. SAMUEL B. POPE, JUDGE,

ADDITIONAL RESPONSE ORDERED.

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**PER CURIAM**

In 2001, Kenneth Isom was convicted of capital murder, residential burglary, attempted capital murder, rape and aggravated robbery by a Drew County jury. Isom was sentenced to death as a result of his capital-murder conviction. His conviction and sentence were affirmed on direct appeal to this court. *Isom v. State*, 356 Ark. 156, 148 S.W.3d 257 (2004).<sup>1</sup> He now asks this court to recall the mandate issued following his direct appeal for three reasons: (1) this court failed to conduct a full review of all adverse rulings made by the circuit court, as required by Arkansas Code Annotated section 16-19-113(a) (1987); (2) his counsel on direct appeal had a conflict of interest because she was employed by the same

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<sup>1</sup>This court has since affirmed the denial of Isom's Rule 37.5 petition for postconviction relief, *see Isom v. State*, 2010 Ark. 495, 2010 WL 5144791, as well as Isom's petition for additional DNA testing of a hair recovered from one of the victims. *See Isom v. State*, 2010 Ark. 496, 2010 WL 5144790 (denying additional testing on the basis that testing previously conducted on the hair did not exclude Isom).

office, the state public defender commission, that employed his allegedly ineffective trial attorney; and (3) his counsel on direct appeal was ineffective. Under his third point, Isom provides a list of eighteen sub-points that entitle him to a new trial or re-sentencing hearing. According to Isom, these three reasons are defects or breakdowns in the appellate process that warrant recalling the mandate in his case. *See Robbins v. State*, 353 Ark. 556, 114 S.W.3d 217 (2003). The State's response, consisting of four pages with only one page addressing the merits of Isom's claims, summarily concludes that his claims do not warrant a recall of the mandate.

This court has held that the death penalty is a unique punishment that demands unique attention to procedural safeguards. *Robbins*, 353 Ark. at 561, 114 S.W.3d at 220. We have added that death-penalty cases require heightened scrutiny. *See Collins v. State*, 261 Ark. 195, 548 S.W.2d 106 (1977); *Robbins*, 353 Ark. 556, 114 S.W.3d 217; *Lee v. State*, 367 Ark. 84, 238 S.W.3d 52 (2006). Under this court's precedent, three criteria must be present in order to recall a mandate: (1) the presence of a defect in the appellate process; (2) a dismissal of proceedings in federal court because of unexhausted state court claims; and (3) the appeal was a death case that required heightened scrutiny. *Lee*, 367 Ark. at 88, 238 S.W.3d at 55.

We are unable to dispose of Isom's motion in this case because the State's response does not specifically or adequately address Isom's claims. In order for this court to fully address Isom's motion, we direct the State to file a response specifically addressing each of Isom's claims for recalling the mandate.

CORBIN, J., not participating.