

SUPREME COURT OF ARKANSAS

No. CR 08-1464

JUSTIN ANDERSON

APPELLANT

Opinion Delivered March 18, 2010

V.

STATE OF ARKANSAS

APPELLEE

REBRIEFING ORDERED.

PER CURIAM

Appellant Justin Anderson appeals from the circuit court's order denying his petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.5. Anderson was convicted of capital murder and was sentenced to death. He appealed his conviction and sentence to this court, and we affirmed his judgment of conviction, but reversed and remanded for resentencing. *See Anderson v. State*, 357 Ark. 180, 163 S.W.3d 333 (2004) (*Anderson I*). On remand, he was again sentenced to death, and we affirmed that sentence. *See Anderson v. State*, 367 Ark. 536, 242 S.W.3d 229 (2006) (*Anderson II*). Now appealing the denial of his petition for postconviction relief, Anderson asserts nineteen points on appeal, one of which contains twenty-eight separate assertions of ineffective assistance by trial counsel. Because Anderson was sentenced to death, and because the argument portion of the brief filed by appellate counsel on Anderson's behalf is woefully deficient, we order rebriefing.

Appellate counsel has a duty to file a brief that adequately and zealously presents the issues and that cites us to persuasive authority. *See Pilcher v. State*, 353 Ark. 357, 107 S.W.3d

172 (2003) (per curiam) (ordering rebriefing of the argument in an appeal from a sentence of life imprisonment without parole). In the instant case, Anderson was sentenced to death and sought relief pursuant to Ark. R. Crim. P. 37.5. We have held that death-penalty cases are different from other criminal cases, due to the obvious finality of the punishment. *See Ward v. State*, 347 Ark. 515, 65 S.W.3d 451 (2002) (per curiam). Because of this difference, Rule 37.5 appeals require a heightened standard of review. *See id.*; *see also Dansby v. State*, 347 Ark. 674, 66 S.W.3d 585 (2002). In addition, the purpose of the exacting requirements of Rule 37.5 is to provide a comprehensive state-court review of a petitioner's claims, thereby eliminating the need for multiple postconviction actions in federal court. *See Ward, supra*. Were we to review Anderson's claims as now presented, we would likely deem each to be conclusory or lacking citation to authority, which would result in a denial of Anderson's right to a comprehensive state-court review. For this reason, we order appellate counsel to file a revised brief on Anderson's behalf.

Upon rebriefing, appellate counsel should specifically articulate his allegations of error and support each allegation with applicable citation to recent authority.¹ In addition, appellate counsel should apply that persuasive authority to the facts of each claim, thoroughly analyze the issues, and advocate for a result that benefits Anderson. In drafting the revised brief,

¹We note that neither mere citation to constitutional provisions nor mere citation to case names without further discussion and application to the facts renders an appellant's argument sufficiently developed. We further note that an appellant should choose those points for appeal thought to merit reversal, rather than take a "kitchen-sink" approach.

appellate counsel should avoid the use of conclusory statements and arguments and refrain from making arguments that are not fully developed. We further suggest that if the State responds to appellate counsel's revised brief, appellate counsel should consider the arguments raised by the State and file a reply brief, if warranted. Finally, we note that our review of the circuit court's order reveals that the circuit court denied several of Anderson's claims based upon a failure to present facts or evidence or a lack of citation to authority in support of those claims. We, therefore, request that appellate counsel, should he choose to appeal those rulings, point this court specifically to the evidence or argument raised to the circuit court that would support a reversal of each of those rulings.

Due to the voluminous nature of this case, appellate counsel's revised brief is due in sixty days. The State may then respond to the revised brief within thirty days. Thereafter, appellate counsel will have fifteen days in which to file a reply brief. No extensions will be granted except upon good cause shown. We further encourage appellate counsel, prior to filing the revised brief, to review our rules and the revised brief to ensure that no additional deficiencies are present, as any subsequent rebriefing order in this matter may result in referral to our Committee on Professional Conduct. *See, e.g., Lee v. State*, 375 Ark. 421, 291 S.W.3d 188 (2009).

Rebriefing ordered.

Jeff Harrelson, for appellant.

No response.