

SUPREME COURT OF ARKANSAS

No. CR 09-107

KELLEY PATRICK MILLS
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered June 24, 2010

APPEAL FROM THE CIRCUIT
COURT OF MILLER COUNTY, CR
85-108, HON. JOE E. GRIFFIN,
JUDGE

AFFIRMED.

PER CURIAM

In 1985, appellant Kelley Patrick Mills entered a plea of guilty to capital murder and was sentenced to life imprisonment without parole. In 1986, appellant timely filed in the trial court a petition and amended petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (1986). The court held a hearing on the petition in 1990, but the order denying the relief sought was not entered until 1998. Appellant appealed from the adverse order, and we affirmed. *Mills v. State*, 338 Ark. 603, 999 S.W.2d 674 (1999) (per curiam).

In 2008, appellant filed a subsequent Rule 37.1 petition in the trial court, alleging that he was entitled to relief under the rule because there was newly discovered evidence to support his claim that he was not mentally competent to enter a plea of guilty.¹ The petition was denied, and appellant brings this appeal.

¹With respect to appellant's claim that the subsequent petition was based on newly discovered evidence, this court has held that newly discovered evidence is a direct challenge to a judgment of conviction and not a basis for postconviction relief under Rule 37.1. *Rodriguez v. State*, 2010 Ark. 78 (per curiam); *Cigainero v. State*, 321 Ark. 533, 906 S.W.2d 282 (1995) (citing *Chisum v. State*, 274 Ark. 332, 625 S.W.2d 448 (1981)).

Since its inception in 1976, Arkansas Rule of Criminal Procedure 37.2(b) has provided that all grounds for relief must be raised in the original petition filed under the rule.² A petitioner is not entitled to file a second petition under the rule, unless the original petition was specifically denied without prejudice to filing a subsequent petition. *Williams v. State*, 273 Ark. 315, 619 S.W.2d 628 (1981). When petitioner's original petition was denied in 1998, the court did not grant him leave to proceed with a subsequent petition; therefore, petitioner was procedurally barred from proceeding again under the rule. The rule is clear, and this court has consistently upheld it. See, e.g., *Kemp v. State*, 2009 Ark. 631; *Swopes v. State*, 338 Ark. 217, 992 S.W.2d 109 (1999) (per curiam); *McCuen v. State*, 328 Ark. 46, 941 S.W.2d 397 (1997); *Chambers v. State*, 304 Ark. 663, 803 S.W.2d 932 (1991) (per curiam); *Lewis v. State*, 299 Ark. 310, 771 S.W.2d 773 (1989) (per curiam); *Grooms v. State*, 293 Ark. 358, 737 S.W.2d 648 (1987) (per curiam); *Nation v. State*, 292 Ark. 149, 728 S.W.2d 513 (1987) (per curiam); *James v. State*, 289 Ark. 560, 712 S.W.2d 919 (1986); *Walker v. State*, 283 Ark. 339, 676 S.W.2d 460 (1984) (per curiam); *Williams v. State*, 273 Ark. 315, 619 S.W.2d 628 (1981) (per curiam). (*Chambers*, *Lewis*, *Grooms*, *Nation*, *James*, *Walker*, and *Williams* decided under a prior version of Rule 37.2(b) which contained comparable language to the current Rule 37.2(b)). Issues that could have been raised in the original petition for postconviction relief

²Criminal Procedure Rule 1(H), the predecessor to Rule 37.2(b), provided that all grounds for postconviction relief were required to be raised in the original petition or an amendment to the original petition. See *Winberry v. State*, 256 Ark. 65, 505 S.W.2d 497 (1974) (citing *Grayer v. State*, 242 Ark. 640, 414 S.W.2d 870 (1967)).

Cite as 2010 Ark. 310

but were not, are considered waived. See *Hendrix v. State*, 291 Ark. 134, 722 S.W.2d 596 (1987); *Blair v. State*, 290 Ark. 22, 716 S.W.2d 197 (1986).

As appellant was not entitled to proceed under Rule 37.1 with a subsequent petition, there was no basis on which the trial court could have granted postconviction relief. For that reason, the order is affirmed.

Affirmed.

CORBIN, J., not participating.