

SUPREME COURT OF ARKANSAS

Barber v. State

2014 Ark. 179 (2014) · No. CR-14-158 · Decided April 17, 2014

SUMMARY

The Arkansas Supreme Court dismissed Tommy Martez Barber’s appeal from the denial of his Arkansas Rule of Criminal Procedure 37.1 postconviction petition and held his motion for appointment of counsel moot. The court concluded that Barber failed to establish ineffective assistance of counsel concerning parole eligibility or discovery materials, and that the trial court did not clearly err in denying relief.

CASE DETAILS

COURT	Supreme Court of Arkansas
JURISDICTION	Arkansas
DECIDED	April 17, 2014
DOCKET	CR-14-158
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appeal from denial of postconviction relief petition
STANDARD OF REVIEW	Clearly erroneous
PRECEDENTIAL VALUE	Published
PARTIES	Tommy Martez Barber v. State of Arkansas

TOPICS

- post-conviction relief
- ineffective assistance
- plea bargaining
- sentencing
- appellate procedure

PRACTICE AREAS

- Criminal Law
- Post-Conviction Relief
- Appellate Practice

QUESTIONS PRESENTED

- Whether the trial court clearly erred in denying postconviction relief on the claim of ineffective assistance of counsel regarding advice on parole eligibility.
- Whether claims challenging the sufficiency of evidence and failure to receive discovery materials are cognizable in a Rule 37.1 proceeding following a guilty plea.

HOLDINGS

1. There is no constitutional requirement for defense counsel to inform a client about parole eligibility, and failure to do so does not fall outside the range of competence demanded of attorneys in criminal cases.
2. Assertions challenging the sufficiency of evidence are not cognizable in a Rule 37.1 proceeding, and the sole issue following a guilty plea is whether the plea was intelligently and voluntarily entered on advice from competent counsel.

KEY QUOTATIONS

“An appeal from an order that denied a petition for postconviction relief will not be permitted to go forward when it is clear that the appellant could not prevail.” (at 1)

“This court has held that there is no constitutional requirement for defense counsel to inform his or her client about parole eligibility and that the failure to impart such information does not fall outside the range of competence demanded of attorneys in criminal cases.” (at 3)

FACTUAL BACKGROUND

Tommy Martez Barber entered a negotiated guilty plea to first-degree murder and was sentenced to 480 months' imprisonment. In exchange, the State agreed not to prosecute three additional felony charges. Barber later filed a Rule 37.1 petition alleging ineffective assistance of counsel, claiming his attorney failed to advise him he would have to serve 70% of his sentence and that he would serve only eight to ten years.

PROCEDURAL HISTORY

Appellant entered a negotiated guilty plea to first-degree murder. He filed a Rule 37.1 petition for postconviction relief, which was denied after an evidentiary hearing. He appealed that denial and moved for appointment of counsel.

DISPOSITION

dismissed

CASES CITED

- Williams v. State, 2014 Ark. 70
- Hayes v. State, 2014 Ark. 104, ___ S.W.3d ___
- Johnson v. State, 2014 Ark. 74
- Sartin v. State, 2012 Ark. 155, 400 S.W.3d 494
- Taylor v. State, 2013 Ark. 146, ___ S.W.3d ___
- Strickland v. Washington, 466 U.S. 668 (1984)
- Williams v. State, 369 Ark. 104, 251 S.W.3d 290 (2007)
- Harrison v. State, 2012 Ark. 198, 404 S.W.3d 830
- Holloway v. State, 2013 Ark. 140, ___ S.W.3d ___

- *Abernathy v. State*, 2012 Ark. 59, 386 S.W.3d 477
- *Howard v. State*, 367 Ark. 18, 238 S.W.3d 24 (2006)
- *Paige v. State*, 2013 Ark. 432
- *Cumming v. State*, 2011 Ark. 410
- *Buchheit v. State*, 339 Ark. 481, 6 S.W.3d 109 (1999)
- *Hill v. Lockhart*, 894 F.2d 1009 (8th Cir. 1990)
- *Oliverez v. State*, 2012 Ark. 24
- *Tornavacca v. State*, 2012 Ark. 224, 408 S.W.3d 727
- *Scott v. State*, 2012 Ark. 199, 406 S.W.3d 1
- *Thacker v. State*, 2012 Ark. 205
- *Sandoval-Vega v. State*, 2011 Ark. 393, 384 S.W.3d 508

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