

SUPREME COURT OF ARKANSAS

Plessy v. State

2014 Ark. 164 (2014) · No. CR-12-539 · Decided April 10, 2014

SUMMARY

The Arkansas Supreme Court denied Quincy Jay Plessy’s pro se petition to reinvest jurisdiction in the trial court and dismissed his appeal. The court held that incarceration and difficulty accessing procedural rules did not constitute good cause for failing to obtain rulings on omitted postconviction issues within the applicable appeal period.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Arkansas
DECIDED	April 10, 2014
DOCKET	CR-12-539
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appeal from the denial of a petition for postconviction relief and a petition to reinvest jurisdiction in the trial court.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion
PARTIES	Quincy Jay Plessy v. State of Arkansas

TOPICS

- post-conviction relief
- state post-conviction relief
- appellate procedure
- preservation of error
- criminal procedure

PRACTICE AREAS

- criminal procedure
- post-conviction relief
- appellate procedure

QUESTIONS PRESENTED

- Whether the Supreme Court of Arkansas should reinvest jurisdiction in the circuit court so Plessy could obtain rulings on issues omitted from the order denying his Rule 37.1 petition.

2. Whether incarceration-related difficulties and lack of access to legal materials constituted good cause for failing to comply with the procedural rules.
3. Whether the appeal should be dismissed when Plessy failed to file a supporting brief within the permitted time and acknowledged that the appeal lacked merit absent further rulings.

HOLDINGS

1. A pro se postconviction petitioner remains responsible for complying with procedural rules and must demonstrate good cause for noncompliance; incarceration-related difficulties, including difficulty accessing a prison law library or procedural materials, did not establish good cause here.
2. The petition to reinvest jurisdiction was denied because Plessy failed to file the required motion in the trial court within the thirty-day period for filing a notice of appeal and failed to show good cause for that procedural failure.
3. The appeal was dismissed because Plessy acknowledged that it lacked merit unless the requested additional rulings were permitted and he failed to file a supporting brief within the time allowed.

KEY QUOTATIONS

“This court has consistently held that the burden to conform to procedural rules applies even where the petitioner proceeds pro se, as all litigants must bear the responsibility for conforming to the rules of procedure or demonstrating good cause for not so conforming.” (2014 Ark. 164, at 2)

FACTUAL BACKGROUND

Plessy was convicted of first-degree murder and committing a felony with a firearm and received a 420-month sentence that included a statutory enhancement. After the appellate affirmance, he pursued postconviction relief under Rule 37.1. The circuit court ruled only on issues raised in an amended petition, leaving issues from the original petition unresolved; Plessy attributed his failure to obtain rulings within the appeal period to incarceration-related difficulties locating procedural rules.

PROCEDURAL HISTORY

Plessy was convicted of first-degree murder and committing a felony with a firearm, and the Arkansas Court of Appeals affirmed the judgment. He filed a timely petition for postconviction relief under Arkansas Rule of Criminal Procedure 37.1, but the circuit court's denial order addressed only issues in a later amended petition and omitted issues from the original petition. Plessy appealed and sought to reinvest jurisdiction in the circuit court so he could obtain rulings on the omitted issues. The Supreme Court of Arkansas denied the petition and dismissed the appeal because he failed to show good cause for noncompliance with the procedural rules and failed to file a supporting brief.

DISPOSITION

dismissed

CASES CITED

- Plessy v. State, 2012 Ark. App. 74, 388 S.W.3d 509
- Hill v. State, 2014 Ark. 57
- Lewis v. State, 2012 Ark. 255
- Lovett v. State, 2013 Ark. 8
- Sullivan v. Hobbs, 2014 Ark. 88

OPINION

PER CURIAM.

Cite as 2014 Ark. 164 SUPREME COURT OF ARKANSAS No. CR-12-539 QUINCY JAY PLESSY Opinion Delivered April 10, 2014 APPELLANT PRO SE PETITION TO REINVEST V. JURISDICTION [SEBASTIAN COUNTY CIRCUIT COURT, FORT SMITH DISTRICT, NO. STATE OF ARKANSAS 66CR-09-1336] APPELLEE HONORABLE JAMES O. COX, JUDGE PETITION DENIED; APPEAL DISMISSED. PER CURIAM Appellant Quincy Jay Plessy was convicted of first-degree murder and committing a felony with a firearm.

On appeal, the Arkansas Court of Appeals affirmed the judgment, which also reflected that appellant received a sentence of 420 months' imprisonment, including a statutory enhancement. Plessy v. State, 2012 Ark. App. 74, 388 S.W.3d 509. Appellant filed a timely petition in the trial court for postconviction relief under Arkansas Rule of Criminal Procedure 37.1 (2013), and he lodged an appeal in this court when the petition was denied.

He has now filed a pleading styled as a "petition to reinvest jurisdiction," and in the petition he seeks to have this court return jurisdiction to the trial court so that he may obtain a ruling on issues that were not addressed in the order denying postconviction relief.

The petition to reinvest jurisdiction is denied, and we dismiss the appeal. In his petition, appellant admits that he failed to obtain a ruling on the issues he raised in his original petition under Rule 37.1. The trial court's order addresses only the issues Cite as 2014 Ark. 164 appellant raised in an amended petition that appellant later filed, and it did not address those issues in the original petition.

Appellant acknowledges that his appeal is without merit unless he is permitted to seek a ruling on these omitted issues, and he offers the circumstances of his incarceration as an excuse for his failure to obtain a ruling on the omitted issues. He appears to contend that, because of the difficulties resulting from his incarceration, he could not comply with the rules of procedure.

That is, he contends that those circumstances "made it impossible to conceive such issues." In support of this proposition, he attaches a document that references a grievance that appellant appears to have submitted to the warden of the facility in which he is incarcerated. Appellant's

complaint in the grievance concerned his difficulties in locating books that contained the applicable rules of procedure.

This court has consistently held that the burden to conform to procedural rules applies even where the petitioner proceeds pro se, as all litigants must bear the responsibility for conforming to the rules of procedure or demonstrating good cause for not so conforming. See *Hill v. State*, 2014 Ark. 57 (per curiam) (where the appellant's alleged learning disability and lack of access to the prison's law library was held not to be good cause for the untimely filing of a petition seeking leave to proceed in the trial court with a petition for postconviction relief).

If he sought to obtain rulings on issues omitted from the initial order denying postconviction relief, appellant was required to file a motion in the trial court within the thirty-day period of time in which to file a notice of appeal under Arkansas Rule of Appellate Procedure–Criminal 2(a)(4) (2013). See *Lewis v. State*, 2012 Ark. 255 (per curiam); see also *Lovett v. State*, 2013 Ark.

8. If this 2 Cite as 2014 Ark. 164 court were to permit exceptions to compliance with procedural rules merely because an incarcerated appellant could point to some difficulty in complying with procedural requirements caused by his or her incarceration or lack of education, there would be little use in promulgating procedural rules, as an appellant could simply bypass the rules by claiming the burden of incarceration or lack of knowledge.

See *Sullivan v. Hobbs*, 2014 Ark. 88 (per curiam). Appellant has therefore not shown good cause for his failure to comply with the procedural rules. The petition is accordingly denied. Because appellant indicated that he does not believe that the appeal has merit unless he is permitted to obtain the additional rulings, and because he has not filed a brief in support of his appeal within the time permitted, we also dismiss the appeal.

Petition denied; appeal dismissed. Quincy Jay Plessy, pro se appellant. No response. 3