

SUPREME COURT OF ARKANSAS

Robertson v. State

367 S.W.3d 538 (Ark. 2010) · No. 2010 Ark. 300 · Decided June 17, 2010

SUMMARY

The Arkansas Supreme Court dismissed Diana Nichole Robertson’s appeal from the denial of multiple postconviction pleadings, holding that she could not prevail. The court concluded that her ineffective-assistance allegations were conclusory, her other claims were procedurally barred or not cognizable under Rule 37.1, and her motion for an extension of time to file a brief was moot.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Per curiam
JURISDICTION	Arkansas
DECIDED	June 17, 2010
DOCKET	2010 Ark. 300
DISPOSITION	dismissed
PROCEDURAL POSTURE	Robertson appealed the circuit court's order denying two Arkansas Rule of Criminal Procedure 37.1 petitions, two motions for trial transcripts, a motion for reconsideration, and two petitions under Arkansas Code Annotated section 16-90-111. She moved for an extension of time to file her brief.
STANDARD OF REVIEW	For an ineffective-assistance claim in an appeal from denial of Rule 37.1 relief, the question is whether, under the totality of the evidence and the Strickland standard, the circuit court clearly erred in finding that counsel was not ineffective. An appeal may be dismissed without briefing when it is clear from the record that the appellant cannot prevail.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion; precedential
PARTIES	Diana Nichole Robertson v. State

TOPICS

state post-conviction relief

ineffective assistance

successive petitions

sentence modification

appellate procedure

PRACTICE AREAS

criminal post-conviction relief

ineffective assistance of counsel

criminal appellate procedure

sentencing

QUESTIONS PRESENTED

1. Whether the appeal from denial of Robertson's postconviction pleadings should be dismissed because it was clear from the record that she could not prevail.
2. Whether the circuit court properly considered only the first Rule 37.1 petition and was not required to address a second petition filed after the first was denied without leave to file another.
3. Whether Robertson's conclusory ineffective-assistance allegations established deficient performance and prejudice under Strickland.
4. Whether claims of trial error, prosecutorial misconduct, sufficiency of the evidence, and incompetence were cognizable or timely in Rule 37.1 proceedings.
5. Whether the petitions for sentence reduction or correction of an illegal sentence under Arkansas Code Annotated section 16-90-111 were timely and independently warranted relief.

HOLDINGS

1. An appeal from an order denying postconviction relief will not be permitted to proceed when it is clear from the record that the appellant could not prevail; the appeal was therefore dismissed and the extension motion was moot.
2. All grounds for Rule 37.1 relief must be raised in the original petition, and a subsequent petition is not permitted unless the first petition was denied without prejudice; when the first petition was denied without leave to file a second petition, the circuit court was not required to address the second petition.
3. Robertson's conclusory allegations did not establish ineffective assistance because she failed to provide factual substantiation showing deficient performance and prejudice.
4. Arkansas does not recognize an ineffective-assistance claim based solely on the cumulative effect of counsel's alleged errors.
5. Claims of trial error that could have been raised at trial or on direct appeal, claims already decided, and direct challenges to the sufficiency of the evidence are not cognizable grounds for Rule 37.1 relief.
6. A claim that a sentence is illegal must be raised within the time allowed by Arkansas Rule of Criminal Procedure 37.2(c), and those time limits are jurisdictional.

KEY QUOTATIONS

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

“Furthermore, conclusory claims of ineffective assistance of counsel, no matter how numerous, do not add up to a showing of incompetence of counsel under the Strickland standard.”

FACTUAL BACKGROUND

In 2009, Robertson was convicted of capital murder, aggravated robbery, and arson and sentenced to life imprisonment without parole. After the conviction was affirmed, she filed multiple Rule 37.1 petitions and related motions, including claims of ineffective assistance, trial error, incompetence, prosecutorial misconduct, and an illegal sentence. The circuit court denied all of the pleadings, and Robertson appealed.

PROCEDURAL HISTORY

Robertson was convicted by a jury of capital murder, aggravated robbery, and arson and received an aggregate sentence of life imprisonment without parole. The Arkansas Supreme Court affirmed the conviction on direct appeal. The circuit court denied all seven postconviction-related pleadings in one order. The Supreme Court dismissed the appeal because the record showed that Robertson could not prevail, rendering her motion for an extension of time moot.

DISPOSITION

dismissed

CASES CITED

- Robertson v. State, 2009 Ark. 430, 347 S.W.3d 460
- Carter v. State, 2010 Ark. 231, 364 S.W.3d 46 (per curiam)
- Goldsmith v. State, 2010 Ark. 158
- Watkins v. State, 2010 Ark. 156, 362 S.W.3d 910
- Meraz v. State, 2010 Ark. 121
- Smith v. State, 367 Ark. 611, 242 S.W.3d 253 (2006) (per curiam)
- Kemp v. State, 2009 Ark. 631
- McCuen v. State, 328 Ark. 46, 941 S.W.2d 397 (1997)
- Ruiz v. State, 280 Ark. 190, 655 S.W.2d 441 (1983) (per curiam)
- Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)
- Jammet v. State, 2010 Ark. 28, 358 S.W.3d 874 (per curiam)
- State v. Barrett, 371 Ark. 91, 263 S.W.3d 542 (2007)
- Sparkman v. State, 373 Ark. 45, 281 S.W.3d 277 (2008)
- Polivka v. State, 2010 Ark. 152, 362 S.W.3d 918 (per curiam)
- Echols v. State, 354 Ark. 530, 127 S.W.3d 486 (2003)
- Huddleston v. State, 339 Ark. 266, 5 S.W.3d 46 (1999)
- Greene v. State, 356 Ark. 59, 146 S.W.3d 871 (2004)
- McCraney v. State, 2010 Ark. 96, 360 S.W.3d 144 (per curiam)

- Johnson v. State, 2009 Ark. 460, 344 S.W.3d 74
- Viveros v. State, 2009 Ark. 548
- Taylor v. State, 297 Ark. 627, 764 S.W.2d 447 (1989) (per curiam)
- Hunes v. State, 2010 Ark. 70
- O'Rourke v. State, 298 Ark. 144, 765 S.W.2d 916 (1989)
- Swindler v. State, 272 Ark. 340, 617 S.W.2d 1 (1981) (per curiam)
- Bell v. State, 2010 Ark. 65, 360 S.W.3d 98 (per curiam)
- Sanford v. State, 342 Ark. 22, 25 S.W.3d 414 (2000)
- Matthews v. State, 332 Ark. 661, 966 S.W.2d 888 (1998) (per curiam)
- Henry v. State, 288 Ark. 592, 708 S.W.2d 88 (1986)
- Dunlap v. State, 2010 Ark. 111
- Heyward v. State, 367 Ark. 18, 238 S.W.3d 24 (2006)
- Norris v. State, 2010 Ark. 230
- DeLoach v. State, 2010 Ark. 79
- Womack v. State, 368 Ark. 341, 245 S.W.3d 154 (2006) (per curiam)
- Reed v. State, 317 Ark. 286, 878 S.W.2d 376 (1994)
- Maxwell v. State, 298 Ark. 329, 767 S.W.2d 303 (1989)
- Britt v. State, 2009 Ark. 569, 349 S.W.3d 290 (per curiam)