

SUPREME COURT OF ARKANSAS

Lowe v. State

423 S.W.3d 6 (Ark. 2012) · Decided April 26, 2012

SUMMARY

The Arkansas Supreme Court denied James Robert Lowe’s petition for a writ of certiorari seeking to supplement the record in his appeal from the denial of postconviction relief and dismissed the appeal. The court held that Lowe could not prevail on his Rule 37.1 claims, including ineffective-assistance claims, because his allegations failed to establish prejudice and his other claims were not cognizable in the proceeding.

CASE DETAILS

COURT	Supreme Court of Arkansas
JURISDICTION	Arkansas
DECIDED	April 26, 2012
DISPOSITION	dismissed
PROCEDURAL POSTURE	Lowe appealed the denial without a hearing of his amended petition for postconviction relief under Arkansas Rule of Criminal Procedure 37.1 and petitioned for a writ of certiorari to supplement the appellate record.
STANDARD OF REVIEW	The court reviewed the denial of Rule 37.1 postconviction relief and determined that reversal for inadequate findings was unnecessary where the petition and record conclusively showed that no relief was warranted. Ineffective-assistance claims were evaluated under the Strickland v. Washington deficient-performance and prejudice standard.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion; precedential.
PARTIES	James Robert Lowe v. State

TOPICS

- state post-conviction relief
- post-conviction relief
- ineffective assistance
- appellate procedure
- evidence

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the appellate record should be supplemented with recordings, receipts, police reports, and testimony from an unrelated revocation proceeding.
2. Whether the appeal from the denial of Rule 37.1 relief should be dismissed because Lowe could not prevail on appeal.
3. Whether the trial court abused its discretion by denying a second motion to amend the Rule 37.1 petition.
4. Whether the trial court's findings were insufficient under Arkansas Rule of Criminal Procedure 37.3.
5. Whether Lowe's ineffective-assistance claims established deficient performance and resulting prejudice under Strickland.
6. Whether claims of prosecutorial misconduct, denial of a fair trial, and denial of due process were cognizable in a Rule 37.1 proceeding.

HOLDINGS

1. The petition for writ of certiorari to supplement the record was denied because the requested materials were either not before the trial court, unnecessary to the appeal, already contained in the record, or available through judicial notice.
2. An appeal from an order denying a petition for postconviction relief will not proceed when it is clear that the appellant cannot prevail on appeal.
3. Claims of prosecutorial misconduct, denial of a fair trial, and denial of due process that attack trial error are not cognizable in a Rule 37.1 proceeding and should have been raised at trial or on direct appeal.
4. Lowe was not entitled to Rule 37.1 relief because none of his ineffective-assistance allegations pleaded facts sufficient to establish prejudice under Strickland.
5. Although Rule 37.3 generally requires written findings identifying the portions of the files or record relied upon when denying relief without a hearing, reversal is not required when the petition is conclusively without merit on its face.
6. The trial court did not abuse its discretion by denying Lowe's second motion to amend his Rule 37.1 petition when it had previously permitted an amendment and the second motion was filed only a few days before the denial order.

KEY QUOTATIONS

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

“A petitioner does not demonstrate the requisite prejudice for a claim of ineffective assistance based on the failure to make a motion or objection if he does not establish in his petition that counsel could have made a

successful motion or objection, and trial counsel cannot be ineffective for failing to make an objection or argument that is without merit.”

FACTUAL BACKGROUND

A confidential informant told police that Lowe was manufacturing or intended to manufacture methamphetamine. Working with police, the informant obtained money and met Lowe and Lowe's girlfriend, and the group visited stores to obtain materials used to manufacture methamphetamine. Police stopped the vehicle after the materials were gathered and arrested Lowe. At trial, evidence showed that Lowe knew how to manufacture methamphetamine, helped direct the purchases, and participated in a plan under which he would manufacture the drug and the informant would sell it.

PROCEDURAL HISTORY

A jury convicted Lowe of possession of drug paraphernalia with intent to manufacture methamphetamine and sentenced him to 360 months' imprisonment. The Arkansas Court of Appeals affirmed the judgment. The trial court later denied Lowe's timely Rule 37.1 petition without a hearing, and Lowe appealed. The Supreme Court of Arkansas denied the petition for writ of certiorari, dismissed the appeal because it was clear Lowe could not prevail, and dismissed his motion for appointment of counsel as moot.

DISPOSITION

dismissed

CASES CITED

- Guy v. State, 2011 Ark. 305
- Drymon v. State, 327 Ark. 375, 938 S.W.2d 825 (1997)
- Anderson v. State, 2011 Ark. 488, 385 S.W.3d 783
- Watson v. State, 2012 Ark. 27
- Riddell v. State, 2012 Ark. 11
- Hendrix v. State, 2012 Ark. 10
- Croft v. State, 2010 Ark. 83
- Crain v. State, 2009 Ark. 512
- Clarks v. State, 2011 Ark. 296
- Rodriguez v. State, 2010 Ark. 78
- Rackley v. State, 2010 Ark. 469
- Olivarez v. State, 2012 Ark. 24
- Richardson v. State, 2011 Ark. 478
- Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)
- Simmons v. State, 2012 Ark. 58
- Croy v. State, 2011 Ark. 284, 383 S.W.3d 367

- Strain v. State, 2012 Ark. 42, 394 S.W.3d 294
- Cowan v. State, 2011 Ark. 537
- Payton v. State, 2011 Ark. 217
- Smith v. State, 367 Ark. 274, 239 S.W.3d 494 (2006)
- Ridling v. State, 360 Ark. 424, 203 S.W.3d 63 (2005)
- Sandoval-Vega v. State, 2011 Ark. 393, 384 S.W.3d 508
- Heritage v. State, 326 Ark. 839, 936 S.W.2d 499 (1996)
- Wedgeworth v. State, 301 Ark. 91, 782 S.W.2d 357 (1990)
- White v. State, 298 Ark. 163, 765 S.W.2d 949 (1989)
- Morris v. State, 300 Ark. 340, 779 S.W.2d 526 (1989)
- Fernandez v. State, 2011 Ark. 418, 384 S.W.3d 520
- Dunlap v. State, 2010 Ark. 111
- Isom v. State, 284 Ark. 426, 682 S.W.2d 755 (1985)