

SUPREME COURT OF ARKANSAS

Gonder v. State

2011 Ark. 248 (Ark. 2011) · Decided June 2, 2011

SUMMARY

The Arkansas Supreme Court dismissed Duane J. Gonder’s consolidated appeals from orders denying postconviction relief and a sentence-reduction request. The court held that his ineffective-assistance claim concerning evidence that the murder victim was armed could not establish prejudice because Gonder had pleaded guilty pursuant to a specific sentencing agreement and had not shown he would have insisted on going to trial. The court also held that the later postconviction petition was barred because all available grounds were required to be raised in the original petition, and it concluded that his motion for appointment of counsel was moot.

CASE DETAILS

COURT	Supreme Court of Arkansas
JURISDICTION	Arkansas
DECIDED	June 2, 2011
DISPOSITION	dismissed
PROCEDURAL POSTURE	Gonder appealed consolidated orders denying relief under Arkansas Code Annotated section 16-90-111 and Arkansas Rule of Criminal Procedure 37.1. He also moved for appointment of counsel. The Arkansas Supreme Court dismissed the appeal because it was clear that Gonder could not prevail on either appeal.
STANDARD OF REVIEW	The Supreme Court does not reverse a denial of postconviction relief unless the circuit court's findings are clearly erroneous. On an ineffective-assistance claim, the question is whether, under the totality of the evidence and Strickland v. Washington, the circuit court clearly erred in finding that counsel was not ineffective. An appeal may be dismissed when it is clear that the appellant could not prevail.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court per curiam opinion; precedential value is not otherwise specified in the source.
PARTIES	Duane J. Gonder v. State

TOPICS

state post-conviction relief

ineffective assistance

plea bargaining

successive petitions

appellate procedure

PRACTICE AREAS

state post-conviction relief

criminal procedure

ineffective assistance of counsel

plea agreements

appellate procedure

QUESTIONS PRESENTED

1. Whether Gonder's sentence-reduction petition, insofar as it alleged ineffective assistance of counsel, had to be treated as a petition for postconviction relief under Arkansas Rule of Criminal Procedure 37.1 regardless of its label.
2. Whether a defendant who pleaded guilty under an agreement for a specified term could establish ineffective assistance or prejudice based on counsel's failure to present evidence intended to obtain a sentence lower than the agreed term.
3. Whether Gonder's later Rule 37.1 petition was barred because all available grounds had to be raised in the original petition.
4. Whether the appeal should be dismissed because Gonder could not prevail on either challenge to the circuit court's postconviction orders.
5. Whether Gonder was entitled to appointment of counsel for the appeal.

HOLDINGS

1. A petition seeking relief cognizable under Arkansas Rule of Criminal Procedure 37.1 is governed by that rule regardless of the label the petitioner places on it.
2. After a guilty plea, the claims cognizable under Rule 37.1 are limited to claims that the plea was not voluntary and intelligent or that it was entered without effective assistance of counsel.
3. A defendant who pleads guilty in exchange for a specified term of incarceration cannot establish ineffective assistance or prejudice merely by asserting that counsel should have sought a sentence lower than the term agreed upon.
4. A petitioner must raise all grounds for relief available under Rule 37.1 in the original petition unless the original petition was denied without prejudice; a subsequent petition raising the same claim is subject to dismissal.
5. The Supreme Court may affirm or dismiss an appeal from a Rule 37.1 denial despite the circuit judge's failure to make written findings under Rule 37.3 when the record establishes that the petition is wholly without merit or that the allegations conclusively show that no relief is warranted.

KEY QUOTATIONS

“As a threshold matter, we note that, while the trial court treated appellant’s first petition as a request for relief under Arkansas Code Annotated § 16-90-111, we have held that a petition that seeks postconviction

relief cognizable under Rule of Criminal Procedure 37.1 is governed by that rule, regardless of the label placed on it by a petitioner.” (at 4)

“A subsequent attempt by appellant to alter the terms of the agreement by seeking a lower sentence than the one that he had contracted for would have been a breach of the agreement.” (at 5-6)

FACTUAL BACKGROUND

Gonder was originally charged with capital murder, aggravated assault, aggravated residential burglary, kidnapping, and furnishing prohibited articles. Under a plea agreement, the capital-murder charge was reduced to first-degree murder, the kidnapping and burglary charges were dismissed, and Gonder pleaded guilty to first-degree murder, aggravated assault, and furnishing prohibited articles in exchange for a cumulative 552-month sentence and monetary assessments. He later argued that counsel was ineffective for failing to inform the court that the murder victim was armed and that this evidence could have produced a lesser sentence or caused him to reject the plea and proceed to trial.

PROCEDURAL HISTORY

Gonder pleaded guilty in Drew County Circuit Court to first-degree murder, aggravated assault, and furnishing prohibited articles under a plea agreement that reduced the capital-murder charge, dismissed two charges, and provided for a cumulative 552-month sentence. The circuit court denied his sentence-reduction petition and later denied his Rule 37.1 petition alleging ineffective assistance of counsel. The appeals from the two orders were consolidated, and the Supreme Court dismissed the appeal and held the motion for appointment of counsel moot.

DISPOSITION

dismissed

CASES CITED

- 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)
- Jamett v. State, 2010 Ark. 28, 358 S.W.3d 874
- Anderson v. State, 2009 Ark. 493
- French v. State, 2009 Ark. 443
- Small v. State, 371 Ark. 244, 264 S.W.3d 512 (2007)
- Musgrove v. State, 2010 Ark. 458
- Carter v. State, 2010 Ark. 349
- Jackson v. State, 2010 Ark. 157
- McLeod v. State, 2010 Ark. 95
- State v. Herred, 332 Ark. 241, 964 S.W.2d 391 (1998)

- Harrison v. State, 371 Ark. 474, 268 S.W.3d 324 (2007)
- State v. Barrett, 371 Ark. 91, 263 S.W.3d 542 (2008)
- Walker v. State, 367 Ark. 523, 241 S.W.3d 734 (2006) (per curiam)
- Cox v. State, 299 Ark. 312, 772 S.W.2d 336 (1989)
- Buchheit v. State, 339 Ark. 481, 6 S.W.3d 109 (1999) (per curiam)
- Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985)
- Green v. State, 2009 Ark. 113, 313 S.W.3d 521
- Pettit v. State, 296 Ark. 423, 758 S.W.2d 1 (1988)
- Davenport v. State, 2011 Ark. 105
- Reed v. State, 375 Ark. 277, 289 S.W.3d 921 (2008)
- Omar v. State, 2011 Ark. 55
- Halfacre v. State, 2010 Ark. 377
- Williams v. State, 320 Ark. 498, 898 S.W.2d 38 (1995)