

## SUPREME COURT OF ARKANSAS

No. CR 10-751

RODERICK A. WHITE

APPELLANT

v.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered September 15, 2011

PRO SE APPEAL FROM THE HOWARD  
COUNTY CIRCUIT COURT [CR 2001-45],  
HON. CHARLES A. YEARGAN, JUDGEAFFIRMED.

## PER CURIAM

Appellant Roderick A. White appeals from the circuit court's order denying his pro se petition to vacate or modify the judgment. In 2001, appellant was convicted of aggravated robbery and was sentenced to 480 months' imprisonment. The Arkansas Court of Appeals affirmed. *White v. State*, CACR 02-110 (Ark. App. Jan. 29, 2003) (unpublished). In 2010, appellant filed a "Petition to Vacate, and/or—to Modify Plus Correct the Judgment Pursuant to Ark. Ct. Rule—60(I) & Fed. Rule—60 (B)(3)," asserting a lack of evidence and prosecutorial misconduct. The circuit court denied the petition, and we affirm the circuit court's order.

Appellant invoked Arkansas Rule of Civil Procedure 60 and Federal Rule of Civil Procedure 60. He offered, however, nothing to demonstrate that the federal rule applied to his postconviction claims, and this court has consistently held that our Rule 60 does not provide an avenue for postconviction relief. *Morgan v. State*, 2010 Ark. 504 (per curiam). The theory behind Rule 60 has been applied in criminal cases only where a court corrects a judgment nunc pro tunc. *Lewis v. State*, 2011 Ark. 176 (per curiam). Appellant, however, did not seek to correct a clerical

error, but rather directly and collaterally challenged the judgment against him in his petition.

Regardless of the label placed on it by a petitioner, a petition is considered an application for relief under Arkansas Rule of Criminal Procedure 37.1 (2011) if the grounds asserted are cognizable under that rule. *Mills v. State*, 2010 Ark. 390 (per curiam). Inasmuch as appellant failed to raise a claim cognizable under Rule 60, there was no ground on which the circuit court could have granted the relief sought. Moreover, to the extent that appellant's claims could be considered a request for postconviction relief, the circuit court did not err in denying the petition. A review of the record reveals that appellant previously filed a petition pursuant to Rule 37.1, which was denied by the circuit court and affirmed on appeal in an unpublished opinion. *White v. State*, CR 03-750 (Ark. Feb. 10, 2005) (per curiam) (unpublished). Rule 37.2(b) does not allow for a subsequent petition unless the original pleading was denied without prejudice to file a second petition, and the record does not reflect such a ruling. *Carter v. State*, 2010 Ark. 349 (per curiam).

For these reasons, the circuit court did not err in denying appellant's petition, and we affirm the circuit court's order.

Affirmed.