

SUPREME COURT OF ARKANSAS

No. 11-524

MICHAEL R. MACKOOL
PETITIONER

V.

STATE OF ARKANSAS
RESPONDENT

Opinion Delivered September 20, 2012

PRO SE PETITION FOR REHEARING
[PULASKI COUNTY CIRCUIT
COURT, 60CV 10-5884, HON.
WENDELL GRIFFEN, JUDGE]

PETITION DENIED.

PER CURIAM

Petitioner Michael R. MacKool was convicted of first-degree murder and theft of property, for which a cumulative sentence of sixty years' imprisonment in the Arkansas Department of Correction ("ADC") was imposed. We affirmed. *MacKool v. State*, 365 Ark. 416, 231 S.W.3d 676 (2006). In October 2010, the State filed a petition pursuant to the State Prison Inmate Care and Custody Reimbursement Act ("Inmate Reimbursement Act"), codified at Arkansas Code Annotated sections 12-29-501 to -507 (Repl. 2009), seeking reimbursement from petitioner's inmate account of a portion of the cost of housing petitioner in the ADC.

Petitioner was provided notice, and a show-cause hearing was held, as required by the statute. See Ark. Code Ann. § 12-29-504(b)(1). Following this hearing, the circuit court granted the State's petition and ordered that the \$5016.61 in petitioner's inmate account be deposited into the state treasury. Petitioner timely filed a notice of appeal from that order. This court affirmed. *MacKool v. State*, 2012 Ark. 287 (per curiam).

Now before us is petitioner's petition for rehearing. Pursuant to Arkansas Supreme Court Rule 2-3(g) (2011), the purpose of a petition for rehearing is "to call attention to specific errors of law or fact which the opinion is thought to contain." This court has stated that it will not consider portions of a petition for rehearing that are nothing more than repetitions of arguments already considered and dismissed by the court. See *Sebastian Cnty. v. Educare Ctrs. of Ark., Inc.*, 296 Ark. 540, 761 S.W.2d 884 (1988); *Butler Mfg. Co. v. Hughes*, 292 Ark. 198, 731 S.W.2d 214 (1987). Furthermore, this court expects a case to be argued fully in the original briefs in the appeal, and new arguments not presented in the original briefs may not be raised in the petition for rehearing. See *Pannell v. State*, 320 Ark. 390, 897 S.W.2d 552 (1995) (per curiam); Ark. Sup. Ct. R. 2-3(g).

In his petition, petitioner argues that this court's affirmance of the circuit court's order was erroneous for three reasons. First, he argues that this court was incorrect when it held that the petitioner's lack-of-due-process argument had not been presented to the circuit court. Second, petitioner contends that, contrary to this court's holding, the money that he received from his mother in his ADC account was a gift and was not part of his "estate" as that word is used in the Inmate Reimbursement Act. Finally, he argues that his equal-protection rights were violated. None of these arguments has merit.

In his first assertion of error, petitioner takes issue with this court's statement that petitioner did not present to the circuit court his argument that his due-process rights were violated when the circuit court ordered petitioner's funds to be deposited into the Pulaski County Circuit Court's registry on October 18, 2010, but did not provide notice to

petitioner until November 4, 2010, of the State's intention to pursue reimbursement. In support of this argument, petitioner points to his opening statement from the hearing, in which he stated:

I tend [sic] to prove today, sir, that my due process was purposefully violated. Mr. Jorgensen confiscated an order and prepared on—signed on October 13, 2010; yet, I was kept in the dark, not served until November the Fourth, 2010, twenty-two days later. If that's not a lack of due process, sir, in its purest form, I don't know what is, sir.

Aside from this reference in his opening statement, petitioner proffered no evidence to support his claim that this delay in providing notice of the pending action was a violation of his due-process rights. All of the testimony that he elicited during the hearing focused on the legality of the Inmate Reimbursement Act and whether the money that petitioner had received from his mother was part of his "estate" within the meaning of that Act. In his closing arguments, petitioner again focused on the meaning of "estate," and he further contended that the procedures of the Inmate Reimbursement Act amounted to discrimination, extortion, fraud, and conspiracy. At no time, once petitioner began presenting evidence, did he focus on the delay in his notification or elicit testimony to suggest that the delay amounted to a denial of due process. Even when petitioner took the stand as his own witness, he did not make a due-process argument.

This court has held that the purpose of opening statements is "to present to the jury an outline of the evidence *to be* introduced and the nature of the issues *to be* tried." *Lamar v. State*, 347 Ark. 846, 68 S.W.3d 294 (2002) (emphasis in original) (internal quotations omitted). Furthermore, an opening statement is not an occasion for argument. *Id.* at 851,

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n.2, 68 S.W.3d at 298, n.2 (citing *United States v. Dinitz*, 424 U.S. 600, 612 (1976) (Burger, C.J., concurring)). By definition, if an opening statement is not an occasion for argument, and the opening statement is the only time that a petitioner references an issue, he has not presented that argument to the circuit court. This court's ruling on the issue was therefore not erroneous.

Petitioner's second assertion of error in his petition for rehearing is that the money that he received from his mother was not part of petitioner's "estate" within the meaning of the Inmate Reimbursement Act. As this court has already stated, the plain language of the statute reflects that any money received by an inmate, including a gift from a family member, is part of his "estate" for purposes of this statute. See *MacKool*, 2012 Ark. 287, at 4. Petitioner is simply trying to rehash this argument a second time through his petition for rehearing. This court will not consider portions of a petition for rehearing that are nothing more than repetitions of arguments already considered and dismissed by the court. See *Sebastian Cnty.*, 296 Ark. 540, 761 S.W.2d 884.

Finally, petitioner argues that his equal-protection rights were violated because the Inmate Reimbursement Act impermissibly creates a class of persons. Petitioner acknowledges that this argument was not presented to the circuit court. This argument was also not presented to this court in petitioner's original brief on appeal. New arguments not presented in the original briefs may not be raised in a petition for rehearing. See *Pannell*, 320 Ark. 390, 897 S.W.2d 552; Ark. Sup. Ct. R. 2-3(g).

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Because petitioner failed to demonstrate any errors of fact or law contained in this court's opinion, his petition for rehearing is denied.

Petition denied.

BROWN, J., not participating.