

Cite as 2009 Ark. 541

SUPREME COURT OF ARKANSAS

No. CR 08-1394

WILBERT L. JOHNSON,
 APPELLANT;

VS.

STATE OF ARKANSAS,
 APPELLEE;

Opinion Delivered November 5, 2009

APPEAL FROM PULASKI COUNTY
 CIRCUIT COURT, SEVENTH
 DIVISION; CR2006-3233; HON.
 BARRY ALAN SIMS, JUDGE;

PRO SE MOTION FOR ACCESS TO
 CERTAIN DOCUMENTS; PRO SE
 MOTION FOR EXTENSION OF TIME
 TO FILE BRIEF;

APPEAL DISMISSED WITH
 PREJUDICE; MOTIONS MOOT.

DONALD L. CORBIN, Associate Justice

Appellant Wilbert L. Johnson pleaded guilty in Pulaski County Circuit Court to one count each of theft of property and fleeing. He was sentenced to twenty years' and five years' imprisonment, respectively, with those sentences to run consecutively.¹ At issue before this court are two pro se motions we previously held in abeyance: a motion for access to the record and a motion for extension of time to file a brief on appeal. *See Johnson v. State*, 2009 Ark. 266 (unpublished per curiam). For the reasons set forth below, those motions are moot as we dismiss Johnson's appeal.

On April 22, 2008, Johnson appeared in circuit court and entered negotiated pleas of guilty to the previously stated charges. On April 28, 2008, one day prior to entry of the

¹The judgment and commitment order also reflects that these consecutive sentences would run concurrently to a sentence imposed in a separate case in Pulaski County, CR 07-3648.

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judgment and commitment order, Johnson filed a motion to withdraw his guilty plea pursuant to Ark. R. Crim. P. 37.1 (2008). In that motion, Johnson requested that he be allowed to withdraw his guilty pleas pursuant to Rule 37, due to ineffective assistance of counsel. Specifically, Johnson stated that his counsel was ineffective because he coerced Johnson into entering the pleas and led him to believe that he was entering guilty pleas to Class C and D felonies and would be sentenced to ten years' imprisonment, as opposed to the twenty-five year sentence he received.

On May 23, 2008, Johnson filed a petition in circuit court entitled "Rule 37 Petition," wherein he asserted numerous allegations of ineffective assistance of counsel.² Repeated in this petition were the allegations that his counsel coerced him into pleading guilty and that he believed he would be sentenced to no more than ten years' imprisonment. Johnson requested that the court vacate, modify, or reverse his convictions, and also sought an evidentiary hearing. While that petition was pending, Johnson filed a petition for writ of mandamus in this court, arguing that he had timely filed a petition to withdraw his plea and that the trial court had failed to rule on the petition. Prior to this court ruling on the mandamus petition, the circuit court entered an order, treating Johnson's April 28 motion as a timely petition for postconviction relief filed under Rule 37.1. In an order entered on August 12, 2008, the circuit court dismissed the petition because of Johnson's failure to include an affidavit as required by Rule 37.1(c), and Johnson timely filed a notice of appeal.

²This petition was not verified but the trial court granted Johnson leave to file an amended petition that was properly verified and subsequently considered the issues raised in the petition.

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On September 15, 2008, the circuit court entered an order denying Johnson's verified Rule 37 petition, after the court found that Johnson had failed to meet his burden of proof on his claims of ineffective assistance of counsel. As relevant to the instant matter, the circuit court found that Johnson's claim that he was coerced into pleading guilty was nothing more than a conclusory allegation. On appeal, this court affirmed the denial of relief under Rule 37. *Johnson v. State*, 2009 Ark. 144 (unpublished per curiam).³

During the time that Johnson's appeal of the September 15 order was pending, he filed several procedural motions with this court related to his appeal of the August 12 order. We granted a writ of certiorari to the circuit court directing it to complete and file a supplemental, certified record containing Johnson's April 28, 2008 motion. *Johnson*, 2009 Ark. 266. Therein, we stated that once the supplemental record was returned to us, we would consider pending motions by Johnson for access to records and an extension of time to file his brief.

Now having the April 28 motion in the record before us, it is clear that Johnson cannot prevail on appeal. In his motion to withdraw his plea, Johnson alleged that his counsel threatened him and told him he would "get railroaded" at trial. This was the same conclusory allegation raised by Johnson in the May 23 petition that was denied by the circuit court and affirmed by this court on appeal in *Johnson*, 2009 Ark. 144. Specifically, with regard to Johnson's allegation of coercion, this court stated that

the purported threats and actions by counsel as described in the petition did not rise to the level of coercion. The only specific threats identified by the petition

³Johnson's appeal of the September 15, 2008 order was assigned docket No. CR 08-1392.

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as made by trial counsel were claims that counsel told appellant he would be “railroaded” if he went to trial and did not accept the plea. Advising appellant of a potentially unfavorable outcome at trial does not rise to the level of coercion.

Id. at 2.

In sum, this court held that Johnson was not entitled to relief under Rule 37 where he could not support a claim of ineffective assistance of counsel on the allegation of coercion; thus, the issue of whether Johnson’s counsel was ineffective for coercing him into pleading guilty is precluded from being raised again pursuant to the law-of-the-case doctrine. *Green v. State*, 343 Ark. 244, 33 S.W.3d 485 (2000). This doctrine dictates that an issue raised and concluded in a prior appeal decision may not be revisited in a subsequent appeal as the matter becomes res judicata. *Id.* Accordingly, we dismiss Johnson’s appeal with prejudice, and the pro se motions to access certain documents and for an extension of time to file brief are both moot.