

SUPREME COURT OF ARKANSAS

No. CR-10-53

DEREK SALES

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered May 23, 2013

APPEAL FROM THE BRADLEY
COUNTY CIRCUIT COURT
[NO. CR-2005-24-3]HONORABLE ROBERT BYNUM
GIBSON, JR., JUDGEREVERSED AND REMANDED.**PAUL E. DANIELSON, Justice**

Appellant Derek Sales was convicted of capital murder and aggravated robbery and sentenced to death and life imprisonment, respectively. This court affirmed in *Sales v. State*, 374 Ark. 222, 289 S.W.3d 423 (2008). Sales subsequently filed a petition for postconviction relief in the circuit court pursuant to Rule 37.5 of the Arkansas Rules of Criminal Procedure. The circuit court denied the petition after a hearing. Sales now appeals from the denial of his petition and argues two points on appeal: (1) his counsel was ineffective for telling the jury during sentencing that he might be pardoned if he were sentenced to life, and (2) his counsel was ineffective because counsel made comments in opening statements that referred to Sales's prior conviction for escape. However, after having reviewed the order, we conclude that the circuit court failed to make specific written findings of fact and conclusions of law as required under Rule 37.5(i). Accordingly, we reverse and remand to the circuit court for entry of a written order in compliance with Rule 37.5(i). See *Decay v. State*, 2013 Ark. 185; *Echols v.*

State, 344 Ark. 513, 42 S.W.3d 467 (2001).

The circuit court's order denying the Rule 37.5 petition provided only a general ruling on all of appellant's claims of ineffective assistance of counsel. The court found, "All are denied because they are either not supported by any convincing testimony developed at the September 9, 2009 hearing, or they were asserted and rejected by the Supreme Court on direct appeal." However, that ruling is not applicable to either of the two claims of ineffective assistance of counsel presented in the instant appeal. Therefore, the circuit court failed to make specific written findings of fact and conclusions of law as required under Rule 37.5(i). In *Decay*, *supra*, we reversed and remanded for the circuit court to enter a written order in compliance with Rule 37.5(i). More specifically, we explained as follows.

Rule 37.5 sets out the postconviction procedures for death-penalty cases. *Fudge v. State*, 354 Ark. 148, 151, 120 S.W.3d 600, 601–02 (2003). Subsection (i) provides in part that the circuit court shall "make specific written findings of fact with respect to each factual issue raised by the petition and specific written conclusions of law with respect to each legal issue raised by the petition." In *Echols*, 344 Ark. at 519, 42 S.W.3d at 470, this court held that this provision imposes a "more exacting duty" on the circuit court than that found in Arkansas Rule of Criminal Procedure 37.3(c), which provides postconviction procedures for non-death-penalty cases. Under Rule 37.5(i), it is the petitioner who determines the issues that must be addressed by the circuit court in a written order, while Rule 37.3(c) provides that the circuit court is to determine the issues and then make specific written findings of fact and conclusions of law with respect to those issues. *Id.*, 42 S.W.3d at 470.

Decay, 2013 Ark. 185, at 1–2.

As in *Decay*, the circuit court in the instant case need only make specific findings of fact and conclusions of law with respect to the two claims currently being pursued on appeal. All other claims raised below but not argued on appeal will be considered abandoned. To avoid

lengthy delay, we direct the circuit court to complete the order within sixty days from the date the mandate is issued.

Reversed and remanded.

Harrelson & Matteson, P.A., by: *Jeff Harrelson*, for appellant.

Dustin McDaniel, Att'y Gen., by: *Kathryn Henry*, Ass't Att'y Gen., for appellee.