

ARKANSAS SUPREME COURT

No. CR 08-48

RICKY LEE SCOTT
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered May 8, 2008

PRO SE MOTION FOR
RECONSIDERATION OF DISMISSAL
OF APPEAL [CIRCUIT COURT OF
CROSS COUNTY, CR 96-61, HON.
L.T. SIMES II, JUDGE]

MOTION DENIED.

PER CURIAM

In 1998, a jury found appellant Ricky Lee Scott guilty of first-degree murder and sentenced him to life imprisonment. The judgment was affirmed on appeal. *Scott v. State*, 337 Ark. 320, 989 S.W.2d 891 (1999). In 2007, appellant filed in the trial court a pro se petition for writ of habeas corpus under Act 1780 of 2001 Acts of Arkansas, codified as Ark. Code Ann. §§ 16-112-201–16-112-208 (Repl. 2006), and a motion for testing. The court denied the motion and petition, and appellant lodged an appeal of that order in this court. The appeal was dismissed because appellant had failed to file a timely petition under the statute. *Scott v. State*, ___ Ark. ___, ___ S.W.2d ___ (Mar. 6, 2008) (per curiam). Appellant now brings a pro se motion requesting the court reconsider the decision to dismiss the appeal.

Appellant asserts error in the determination that the handwriting samples to be tested were not newly discovered evidence, in that the jersey he wished to be tested was not presented at trial as indicated, and in the determination that testing on a bullet casing could have been requested prior

to the discovery of certain notes from the prosecution files in 2006. He also claims that he filed a previous petition under Act 1780 in 2004 and that the petition filed in 2007 was an amendment to that petition. But, the record does not contain a prior petition and the petition in the record does not refer to any prior petition.

Appellant first asserts error because he claims that there were certain forms discovered after the trial which matched the handwriting in the witness statements. Those forms, however, were not the items to be tested to determine whether the statements were forgeries. Those forms were not relevant to the issue of whether the witness statements were composed by the witnesses. Whether newly discovered or not, the forms were simply not necessary for testing of the statements to determine whether or not they were forgeries. If the forms were withheld, that conduct did not prevent testing of the statements.

Appellant next claims the jersey was not presented at trial as our opinion indicates. He contends that his argument was misstated because he claimed the prosecution withheld evidence concerning the testing, rather than alleging that there were new procedures for testing available. Although the jersey may not have been presented to the jury, the allegation in appellant's petition was that the jersey was presented as evidence to him during the course of the trial proceedings. The basis of the holding on that issue, in any event, was not concerned with the availability of new procedures, but concerned the fact that the requested testing would not exonerate appellant. Even if appellant's allegation was not correctly stated, or if appellant's argument had been understood as he now indicates he intended, he still provides no reason to reconsider the determination that his petition was inadequate. As the decision to dismiss the appeal indicates, appellant had a burden to show in his petition that the testing would advance his claim of innocence, and he failed to meet that

burden.

In appellant's last allegation of error, he argues that his petition set forth a different ground under Ark. Code Ann. § 16-112-202(10)(B) (Repl. 2006) to rebut the presumption against timeliness. Once again he points to allegations of prosecutorial misconduct, claiming that he was prevented from requesting testing of the shell casing because a certain note was withheld. The note appellant contends was withheld contained some references to the casing with a different description. But, the note did not raise any different issue than the one already settled at appellant's trial. The defense was aware of the casing and the prosecution's contention that it was from the murder weapon.

Appellant does not provide any basis in the motion to conclude the opinion was in error. We accordingly deny the motion to reconsider the dismissal of the appeal.

Motion denied.