

## SUPREME COURT OF ARKANSAS

No. CR 09-1166

TERRANCE LAMONT WALTON  
APPELLANT

V.

STATE OF ARKANSAS  
APPELLEE

Opinion Delivered September 8, 2011

PRO SE APPEAL FROM THE  
CIRCUIT COURT OF PULASKI  
COUNTY, CR 2007-4516, HON.  
HERBERT T. WRIGHT, JR., JUDGE,

AFFIRMED.

## PER CURIAM

Appellant Terrance Lamont Walton brings the instant pro se appeal from an order of the Pulaski County Circuit Court denying his petition for relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2011). Because there was no clear error in the trial court's findings that appellant failed to prove that his trial counsel was ineffective, we affirm.

In 2008, appellant was convicted of breaking and entering and was sentenced, as a habitual offender, to a term of fifteen years' imprisonment. The Arkansas Court of Appeals affirmed the conviction. *Walton v. State*, 2009 Ark. App. 170 (unpublished). Appellant subsequently filed in the trial court a timely petition for postconviction relief pursuant to Rule 37.1. In his petition, appellant raised several allegations that his trial counsel was ineffective. The trial court entered an order denying appellant's Rule 37.1 petition. This appeal followed.

This court does not reverse a denial of postconviction relief unless the trial court's findings are clearly erroneous. *Payton v. State*, 2011 Ark. 217 (per curiam). A finding is clearly erroneous when, although there is evidence to support it, the appellate court, after reviewing

the entire evidence, is left with the definite and firm conviction that a mistake has been committed. *Id.*

In making a determination on a claim of ineffective assistance of counsel, this court considers the totality of the evidence. *Anderson v. State*, 2010 Ark. 404, \_\_\_ S.W.3d \_\_\_ (per curiam). Our standard of review requires that we assess the effectiveness of counsel under the two-prong standard set forth by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984). *Shipman v. State*, 2010 Ark. 499 (per curiam). Under the *Strickland* test, a petitioner raising a claim of ineffective assistance must first show that counsel made errors so serious that counsel was not functioning as the “counsel” guaranteed the petitioner by the Sixth Amendment to the United States Constitution. *Id.* A defendant making an ineffective-assistance-of-counsel claim must show that his counsel’s performance fell below an objective standard of reasonableness. *Miller v. State*, 2011 Ark. 114 (per curiam).

Additionally, in order to meet the second prong of the test, the petitioner must show that counsel’s deficient performance prejudiced petitioner’s defense to such an extent that he was deprived of a fair trial. *Carter v. State*, 2011 Ark. 226 (per curiam). A claimant must show that there is a reasonable probability that the fact-finder’s decision would have been different absent counsel’s errors. *Mingboupha v. State*, 2011 Ark. 219 (per curiam). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. *Id.*

Appellant’s first point on appeal is that the trial court erred in denying his Rule 37.1 petition because counsel was ineffective in failing to challenge the circumstantial evidence inasmuch as, had he done so, appellant would have been found not guilty, as his mere presence near the scene of the crime did not establish his guilt. The claim is without merit.

Appellant cannot rechallenge the weight and sufficiency of the evidence through a Rule 37.1 proceeding by framing his question as an allegation of ineffective assistance of counsel. *Weatherford v. State*, 363 Ark. 579, 215 S.W.3d 642 (2005) (per curiam). Postconviction relief under Rule 37.1 is a means to collaterally attack a conviction; it is not a means for direct attack on the judgment or a substitute for an appeal. *Davis v. State*, 345 Ark. 161, 44 S.W.3d 726 (2001). Appellant's argument constitutes a direct attack on the judgment and is therefore not cognizable under Rule 37.1. *Weatherford*, 363 Ark. 579, 215 S.W.3d 642.

To the extent that this argument may present an actual ineffective-assistance-of-counsel claim, appellant fails to demonstrate that he suffered prejudice as a result of counsel's actions. The burden is on appellant to provide facts to support his claims of prejudice. *Nelson v. State*, 344 Ark. 407, 39 S.W.3d 791 (2001) (per curiam). Without such a showing, appellant fails to satisfy the prejudice prong of *Strickland*. *Id.* To prevail on this argument, appellant must demonstrate that trial counsel's motions for directed verdict would have been granted had the motions been articulated as appellant proposes. Appellant has not made such a showing.

Appellant's various attacks on the nature of the circumstantial evidence presented by the State are simply unavailing. This court has held that circumstantial evidence may constitute substantial evidence to support a conviction. *Ross v. State*, 346 Ark. 225, 57 S.W.3d 152 (2001). In denying appellant's Rule 37.1 petition, the circuit court made note of the fact that the court of appeals had held that appellant's sufficiency challenge was procedurally barred because his attorney failed to state specific grounds supporting the objection. The circuit court further noted, however, that the court of appeals explained that, even had the issue been properly preserved, the circumstantial evidence presented at trial was substantial and excluded

every reasonable hypothesis other than appellant being the perpetrator of the crime. The circuit court then correctly concluded that appellant was not unfairly prejudiced by his attorney's failure to state specific grounds in support of the motion. Appellant, therefore, failed to demonstrate that any prejudice resulted.

Affirmed.