

SUPREME COURT OF ARKANSAS

No. CR 10-1262

ALBERT BELL

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered September 22, 2011

PRO SE APPEAL FROM THE
ARKANSAS COUNTY CIRCUIT COURT,
NORTHERN DISTRICT, CR 93-04, HON.
DAVID G. HENRY, JUDGEAFFIRMED.**PER CURIAM**

Appellant Albert Bell appeals from the circuit court's order denying his petition for recall and resentencing. In 1997, this court affirmed appellant's convictions on two counts of first-degree murder and his sentence to two consecutive life sentences.¹ *State v. Bell*, 329 Ark. 422, 948 S.W.2d 557 (1997).

Appellant subsequently filed a petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2005). The petition was denied, and we affirmed. *Bell v. State*, CR 02-1071 (Ark. May 13, 2004) (unpublished per curiam).

¹Prior to this decision, Bell had appealed the circuit court's denial of his motion seeking transfer to juvenile court, and this court affirmed the circuit court's order. *Bell v. State*, 317 Ark. 289, 877 S.W.2d 579 (1994). He was tried, and Bell appealed his convictions and sentence; this court reversed and remanded in part for a new suppression hearing. *Bell v. State*, 324 Ark. 258, 920 S.W.2d 821 (1996). Upon remand, the circuit court suppressed Bell's statements, and the State appealed. In a 4-3 decision, this court reversed the circuit court's order of suppression, held that a new trial was not warranted, and ordered a mandate be issued affirming Bell's convictions and sentence.

Cite as 2011 Ark. 379

On October 5, 2010, appellant filed his petition for recall and for resentencing in the circuit court. Appellant sought resentencing by the circuit court based on the recent decision of the United States Supreme Court in *Graham v. Florida*, ___ U.S. ___, 130 S. Ct. 2011 (2010), wherein the Court held that the Eighth Amendment forbids a sentence of life imprisonment without parole for a juvenile offender who did not commit homicide. The circuit court denied his petition, and appellant brings this appeal. We affirm the circuit court's order.

Appellant's petition must be treated as one for postconviction relief under Rule 37.1. Regardless of the label placed on a pleading, a pleading that seeks postconviction relief is governed by the provisions of our postconviction rule. *Lewis v. State*, 2011 Ark. 176 (per curiam). Rule 37.2(b) does not allow for a subsequent petition to be filed under the rule unless the original pleading was denied without prejudice to filing a second petition. *Omar v. State*, 2011 Ark. 55 (per curiam). Appellant has not demonstrated that his first Rule 37.1 petition was denied without prejudice, and that a subsequent Rule 37.1 petition would therefore be allowed.

But, even if a subsequent petition were allowed, appellant's argument would fail. Noting that he was sixteen years old at the time of the murders, appellant's petition claimed that he was entitled to resentencing under *Graham* because he was only an accomplice to first-degree murder and, thus, did not commit a homicide offense. However, our case law makes clear that appellant was convicted of two homicides. Notwithstanding his claim that he was only an accomplice, we have held that there is no distinction between principals on the one hand and accomplices on the other, insofar as criminal liability is concerned. *Lawshea v. State*, 2009 Ark. 600, ___ S.W.3d ___. When two people assist one another in the commission of a crime, each is an accomplice

Cite as 2011 Ark. 379

and criminally liable for the conduct of both. *Id.*; see also *Cox v. State*, 2011 Ark. 96 (per curiam).

Because appellant was not convicted of a nonhomicide offense, *Graham* is simply inapplicable.

For the foregoing reasons, we affirm the circuit court's order.

Affirmed.