

**SUPREME COURT OF ARKANSAS**

No. CR 11-109

CHARLES GOODMAN, JR.  
APPELLANT

V.

STATE OF ARKANSAS  
APPELLEE**Opinion Delivered** October 13, 2011PRO SE APPEAL FROM THE SALINE  
COUNTY CIRCUIT COURT, CR  
2008-363, HON. GRISHAM A.  
PHILLIPS, JUDGE**AFFIRMED.****PER CURIAM**

In 2009, appellant Charles Goodman, Jr., was found guilty by a jury of two counts of rape and sentenced to 180 months' imprisonment. The Arkansas Court of Appeals affirmed. *Goodman v. State*, 2010 Ark. App. 140.

In 2010, appellant timely filed in the trial court a pro se petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2009). The petition was denied, and appellant brings this appeal. We find no error and affirm the trial court's order.

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 an appeal from a trial court's denial of postconviction relief on a claim of ineffective assistance of counsel, the sole question presented is whether, based on a totality of the

evidence, under the standard set forth by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984), the trial court clearly erred in holding that counsel's performance was not ineffective. *Mingboupfa v. State*, 2011 Ark. 219 (per curiam). Under the two-pronged *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.* As to the second prong of *Strickland*, the claimant must demonstrate that counsel's deficient performance prejudiced his defense to such an extent that the petitioner was deprived of a fair trial. *See id.* Such a showing requires that the petitioner demonstrate a reasonable probability that the fact-finder's decision would have been different absent counsel's errors. *Id.* A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. *Id.*

In his petition, appellant set forth several bases for postconviction relief, including six claims of ineffective assistance of counsel. He asserted that trial counsel was ineffective for failing to (1) subpoena five key witnesses; (2) prepare him for trial; (3) present video evidence to contradict the testimony of the State's witnesses; (4) move for or otherwise request medical records; (5) object to mention of a photograph that was not introduced into evidence and that was prejudicial; (6) spend adequate time with him to build a proper defense. In addition, appellant argued that the evidence was insufficient to support the jury's verdict, that the trial court lacked jurisdiction due to the State's failure to prove that the offenses occurred within the county of trial, and that the trial judge engaged in ex parte communication with the jury.

With respect to appellant's claims of ineffective assistance of counsel, he merely listed a series of allegations that were entirely conclusory in nature with no factual substantiation to demonstrate how trial counsel's conduct specifically prejudiced the defense. Appellant did not identify the five witnesses that trial counsel failed to subpoena, nor did he provide a summary of what their testimony would have been. He did not explain how trial counsel failed to prepare him for trial or help him prepare a proper defense, nor did he identify the video evidence or set forth the contradictions that such evidence would have provided. Appellant failed to specify which medical records trial counsel should have moved for, and he did not explain the information that would have been gained from the records. Finally, he failed to explain how mention of a photograph prejudiced his defense. Conclusory statements without factual substantiation are insufficient to overcome the presumption that counsel was effective and do not warrant granting postconviction relief. *Carter v. State*, 2011 Ark. 226 (per curiam).

Appellant's claims regarding sufficiency of the evidence and the trial court's jurisdiction similarly did not warrant postconviction relief. Both issues were decided by the court of appeals in appellant's direct appeal, and a proceeding under Rule 37.1 does not allow an appellant the opportunity to reargue points that were decided on direct appeal. *Britt v. State*, 2009 Ark. 569 (per curiam).

Finally, we cannot say that the circuit court clearly erred in denying postconviction relief on appellant's allegation that the trial court engaged in ex parte communications with the jury, which is a claim that could have been raised at trial. With respect to appellant's allegation that he was deprived of his right to be present at a critical stage of the proceedings

Cite as 2011 Ark. 438

against him, the assertion claimed a violation of due process. This court has consistently held that due-process claims are not cognizable in a Rule 37.1 proceeding. *Miller v. State*, 2011 Ark. 114 (per curiam).

Affirmed.