

SUPREME COURT OF ARKANSAS

No. CR 11-1165

RANDALL T. McARTY

APPELLANT

v.

RAY HOBBS, DIRECTOR, ARKANSAS
DEPARTMENT OF CORRECTION

APPELLEE

Opinion Delivered August 14, 2012

PRO SE PETITION FOR REHEARING
[APPEAL FROM THE JEFFERSON
COUNTY CIRCUIT COURT, CV 11-551,
HON. JODI RAINES DENNIS, JUDGE]PETITION DENIED.

PER CURIAM

Appellant Randall T. McArty was convicted in 1993 of first-degree murder. The judgment-and-commitment order shows that appellant was “sentenced to hard labor” in the Arkansas Department of Correction (“ADC”) for life. This court affirmed. *McArty v. State*, 316 Ark. 35, 871 S.W.2d 346 (1994). He then timely filed a petition for postconviction relief, which was denied, and this court affirmed that order. *McArty v. State*, CR 94-1010 (Ark. Apr. 10, 1995) (unpublished per curiam). A subsequent attempt to challenge the denial of postconviction relief under Arkansas Rule of Civil Procedure 60 (2005) was also unsuccessful. *See McArty v. State*, 364 Ark. 517, 221 S.W.3d 332 (2006).

In 2011, appellant filed a petition for writ of habeas corpus in the Jefferson County Circuit Court, alleging that his sentence exceeded the statutory sentencing authority of the circuit court and was a violation of appellant’s right against cruel and unusual punishment.¹ The circuit

¹This was the second habeas-corpus petition filed by appellant in the Jefferson County Circuit Court. The first, filed in 2007, was dismissed for failure to state a claim upon which relief could be granted, and no appeal was taken from that dismissal.

court denied the petition, and we affirmed. *McArty v. Hobbs*, 2012 Ark. 257 (per curiam).

Now before us is appellant's pro se petition for rehearing. Because appellant has not demonstrated that this court's opinion contained errors of fact or law as required by Arkansas Supreme Court Rule 2-3(g) (2011), the petition is denied.

In our decision affirming the circuit court's denial of habeas relief, we held that appellant's life sentence "at hard labor" was not an illegal condition on his sentence because, "It is the settled policy of the State that those who, for crimes committed, are sentenced to the penitentiary, shall be confined at hard labor." *McArty*, 2012 Ark. 257 (quoting *Ward v. Little Rock*, 41 Ark. 526 (1883)). As grounds for rehearing, appellant argues that this statement was incorrect because, prior to the passage of Amendment 21 of the Arkansas Constitution, a defendant could be sentenced to a term of greater than one year at hard labor only by way of an indictment by a grand jury. Thus, because appellant was charged by felony information, rather than by indictment by a grand jury, he contends that the trial court lacked jurisdiction to impose a sentence of "hard labor," and he is therefore entitled to habeas relief. Furthermore, according to appellant, the United States Supreme Court has held that a crime punishable by hard labor was an "infamous crime" within the meaning of the Fifth Amendment to the United States Constitution, which states, "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury."

Neither of appellant's arguments has merit. Regarding appellant's position that our statement of Arkansas's policy was incorrect in light of Amendment 21, we note that the amendment, which allowed prosecution based on a felony information filed by the prosecuting

attorney of “all offenses heretofore required to be prosecuted by indictment,” was passed in 1935. *See Brockelhurst v. State*, 195 Ark. 67, 111 S.W.2d 527 (1937). Appellant was charged by felony information in 1992. *See McArty*, 316 Ark. 35, 871 S.W.2d 346. The trial court therefore had jurisdiction to try appellant. *See Ruiz v. State*, 299 Ark. 144, 772 S.W.2d 297 (1989). The trial court also had jurisdiction to sentence appellant in accordance with Arkansas law, *Jackson v. Norris*, 2011 Ark. 49, ___ S.W.3d ___, which it did when it sentenced him to life upon his conviction for first-degree murder, a Y felony, punishable by ten to forty years, or life. Ark. Code Ann. § 5-4-401(a)(1) (Repl. 2005). Nothing in Amendment 21 deprived the trial court of jurisdiction in this case, nor did the amendment change “the settled policy of the State that those who, for crimes committed, are sentenced to the penitentiary, shall be confined at hard labor.” *See Ward*, 41 Ark. 526; *see also Shoop v. State*, 209 Ark. 642, 192 S.W.2d 122 (1946) (holding that hard labor is assumed as part of a valid sentence to imprisonment in the ADC).

Appellant’s reference to the Fifth Amendment to the United States Constitution is similarly unavailing. Appellant did not make this argument in his petition for writ of habeas corpus, and a rehearing does not encompass a set of new facts, new briefs, and new arguments. *See Pannell v. State*, 320 Ark. 390, 897 S.W.2d 552 (1995). Counsel are expected to argue the case fully in the original briefs. Ark. Sup. Ct. R. 2-3(g).

A petition for rehearing will not be granted absent a showing of specific errors of law or fact which the opinion is thought to contain. *Id.* Because appellant has not made such a showing, his petition for rehearing is accordingly denied.

Petition denied.

Randall T. McArty, pro se appellant.

Dustin McDaniel, Att’y Gen., by: *William Andrew Gruber*, Ass’t Att’y Gen., for appellee.