

SUPREME COURT OF ARKANSAS

No. CR13-47

CHARIELL ALI GLAZE

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered April 4, 2013

PRO SE MOTION FOR
APPOINTMENT OF COUNSEL
[FAULKNER COUNTY CIRCUIT
COURT, 23CR 09-454, HON. DAVID L.
REYNOLDS, JUDGE]

APPEAL DISMISSED; MOTION
MOOT.

PER CURIAM

On July 13, 2010, appellant Chariell Ali Glaze was found guilty by a jury of the offense of being a felon in possession of a firearm. He was sentenced to 300 months' imprisonment. On November 3, 2011, this court affirmed the conviction but remanded the matter for resentencing. On November 22, 2011, appellant filed four pro se pleadings in the trial court—a petition to correct a sentence imposed in an illegal manner and a petition to correct an illegal sentence pursuant to Arkansas Code Annotated section 16-90-111 (Supp. 2011), a motion for reconsideration seeking correction of sentence, and a petition for postconviction relief pursuant to Arkansas Criminal Procedure Rule 37.1 (2011). On May 8, 2012, a new sentencing order was entered reflecting that appellant had been resentenced to a term of 216 months' imprisonment.

On September 20, 2012, the trial court denied the four pleadings that had been filed by appellant on November 22, 2011. Appellant has lodged an appeal here from the order, and he now asks by pro se motion that counsel be appointed to represent him on appeal.

The four pleadings filed by appellant were filed before he was resentenced, and they constituted a challenge to the original judgment and sentence imposed therein. When appellant was resentenced, the three pleadings that challenged the original sentence of 300 months' imprisonment became moot.

With respect to the Rule 37.1 petition that was filed on the day that the mandate of this court issued, the trial court concluded that the petition was untimely on the ground that it was filed while the appeal was pending. This was not correct. A Rule 37.1 petition filed after the appellate court affirms the judgment but before the mandate issues is considered timely filed on day after the day the mandate issues. Ark. R. Crim. P. 37.2(c)(ii); *Slocum v. State*, 2013 Ark. 74 (per curiam). Nevertheless, in the instant matter, it is clear from the record that appellant did not make the showing required to grant a Rule 37.1 petition, and this court has consistently held that an appeal from an order that denied a petition for postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *Purifoy v. State*, 2013 Ark. 26 (per curiam); *Hickman v. State*, 2012 Ark. 359 (per curiam); *Morgan v. State*, 2012 Ark. 227 (per curiam). Accordingly, the appeal is dismissed, and the motion for appointment of counsel is moot.

Appellant contended that he was denied effective assistance of counsel and due process and that there was prosecutorial misconduct in the course of his trial. The claims concerning his attorney's competency were entirely conclusory in nature; that is, the allegations were not supported by any factual information from which it could be determined that counsel was ineffective. Conclusory statements that counsel was ineffective cannot be the basis of

postconviction relief. *Jackson v. State*, 2013 Ark. 19 (per curiam) (citing *Anderson v. State*, 2011 Ark. 488, 385 S.W.3d 783)). To warrant postconviction relief, the petitioner bears the burden of identifying specific acts and omissions that, when viewed from counsel's perspective at the time of trial, could not have been the result of reasonable professional judgment. *Isom v. State*, 2010 Ark. 495, 370 S.W.3d 491.

When considering an appeal from a circuit court's denial of a Rule 37.1 petition on allegations 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 circuit court clearly erred in holding that counsel's performance was not ineffective. *Anderson*, 2011 Ark. 488, 385 S.W.3d 783; *Sparkman v. State*, 373 Ark. 45, 281 S.W.3d 277 (2008). In making a determination of ineffective assistance of counsel, the totality of the evidence must be considered. *Howard v. State*, 367 Ark. 18, 238 S.W.3d 24 (2006).

The benchmark for judging a claim of ineffective assistance of counsel must be "whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Pursuant to *Strickland*, the effectiveness of counsel is assessed under a two-prong standard. 466 U.S. at 686. First, a petitioner raising a claim of ineffective assistance must 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. *Williams v. State*, 369 Ark. 104, 251 S.W.3d 290 (2007). A court must indulge in a strong presumption that counsel's conduct falls within the wide range of reasonable

professional assistance. *Id.*

Second, the petitioner must show that counsel's deficient performance so prejudiced petitioner's defense that he was deprived of a fair trial. *Id.* A petitioner making an ineffective-assistance-of-counsel claim must show that his counsel's performance fell below an objective standard of reasonableness. *Abernathy v. State*, 2012 Ark. 59, 386 S.W.3d 477 (per curiam). Again, a petitioner must identify specific acts and omissions that call counsel's representation into question. Appellant did not meet his burden of demonstrating that counsel was ineffective.

As to appellant's assertion that he was denied due process, his claim was entirely founded on whether the original sentence imposed on him was legal. Because that sentence was vacated, the argument was moot.

Appellant's third claim that there was prosecutorial misconduct at this trial was a mere statement of his dissatisfaction with questioning of the jury by the prosecution in voir dire and the witnesses at trial and the presentation of evidence. It is well settled that a claim of prosecutorial misconduct standing alone is not grounds for postconviction relief. *Johnson v. State*, 2012 Ark. 255 (per curiam).

Finally, appellant urged the trial court to consider that counsel's errors, taken as a whole, amounted to ineffective assistance of counsel. We have repeatedly held that the concept of cumulative error is not recognized in Rule 37.1 proceedings when assessing whether a petitioner was afforded effective assistance of counsel. *Jackson*, 2013 Ark. 19; *Williams*, 369 Ark. 104, 251 S.W.3d 290; *see also State v. Franklin*, 351 Ark. 131, 89 S.W.3d 865 (2002) (holding that it was reversible error for the trial court to consider cumulative error in assessing claims of effective

assistance of counsel).

Appeal dismissed; motion moot.

Chariell Ali Glaze, pro se appellant.