

ARKANSAS SUPREME COURT

No. CR 86-183 & CR 86-184

KENNY HALFACRE
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered November 13, 2008

PRO SE PETITION TO REINVEST
JURISDICTION IN THE TRIAL
COURT TO CONSIDER A PETITION
UNDER RULE 37.1 [CIRCUIT COURT
OF PULASKI COUNTY, CR 85-1577,
CR 85-1579]

PETITION DISMISSED.

PER CURIAM

Now before us is petitioner's pro se petition to reinvest jurisdiction in the trial court to consider a petition under the version of Arkansas Rule of Criminal Procedure 37.1 in effect when he was convicted.¹ The petition concerns two separate criminal cases. In each, petitioner was convicted of one count of aggravated robbery under the statute in effect at the time of the crimes. See Ark. Stat. Ann. §§ 41-2102(a) and 41-2103 (Repl. 1977). We affirmed both convictions. *Halfacre v. State*, 292 Ark. 329, 731 S.W.2d 182 (1987); *Halfacre v. State*, 292 Ark. 331, 731 S.W.2d 179 (1987).

Petitioner has previously sought leave from this court to reinvest jurisdiction in the trial court to consider a petition for postconviction relief under Rule 37.1 in these two criminal matters. The prior petitions have been denied.² In the instant petition, petitioner has likewise failed to

¹For clerical purposes, the instant pleading was assigned the same docket numbers as the direct appeals of the judgments. Prior to July 1, 1989, a petitioner whose judgment of conviction had been affirmed on appeal was required to petition this court for relief under Criminal Procedure Rule 37.1 and gain leave from this court to proceed under the rule in the circuit court before filing a petition there.

²*Halfacre v. State*, 86-183 (Ark. Nov. 9, 1987) (per curiam) (regarding Pulaski County Case No. CR 85-1579); *Halfacre v. State*, 86-184 (Ark. Nov. 9, 1987) (per curiam) (regarding Pulaski Case No. CR 85-1577, granting the petition in part and denying the petition in part); *Halfacre v. State*, 86-183 and 86-

demonstrate entitlement to the relief sought, and the petition is dismissed.

Petitioner committed both underlying felonies in 1985. Under the version of Rule 37.1 that was in effect when petitioner committed those crimes, petitions were required to be filed within three years from the date the judgment was entered. Ark. R. Crim. P. 37.2(c) (1985). Nevertheless, grounds sufficient to void the judgment absolutely creates an exception to the time limitation. *Travis v. State*, 286 Ark. 26, 688 S.W.2d 935 (1985). An issue sufficient to void a judgment absolutely must be an issue that will render the judgment a nullity. *Id.* An example is a trial court's lack of jurisdiction to try a petitioner. *Id.*

To avoid the three-year time limitation, petitioner here crafts his argument based upon an allegation that the judgments are void. Even so, the instant petition is the third petition filed in this court seeking Rule 37.1 relief pertaining to the two criminal cases at issue. Under the applicable provision, a petitioner was required to raise all issues for postconviction relief in the original petition unless that petition was denied without prejudice. Ark. R. Crim. P. 37.2(b) (1985); *Ruiz v. State*, 280 Ark. 190, 655 S.W.2d 441 (1983) (per curiam) (prohibiting a subsequent petition in a capital-murder case).

In this matter, petitioner's original petitions filed in this court in 1987 were not denied without prejudice. The second petition was denied by this court in 2007 as being a prohibited subsequent petition. Petitioner is therefore prohibited from filing a third petition seeking to reinvest jurisdiction in the trial court to consider a Rule 37.1 petition.

Petition dismissed.

184 (Ark. Mar. 22, 2007) (per curiam) (regarding Case Nos. CR 85-1577 and CR 85-1579, seeking a writ of error coram nobis, or, in the alternative, permission to file a Rule 37.1 petition in the trial court).