NO.

BEFORE THE SUPREME COURT
OF THE UNITED STATES

James E. Whitney **Petitioner**

v.

Anto'nio Guterres, et al. **Respondents**

On Petition For A Writ Of Certiorari
To The State Of Arkansas Supreme
Court Case # CV-17-693

Appendix A
Opinions Below

James E. Whitney, Pro se
Sui Juris In Propria Persona
163817
P.O. Box 600
Grady, Arkansas 71644-0600

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INDEX TO APPENDIX A (CON'T)

2018 Ark. 133

NOTICE: THIS DECISION WILL NOT APPEAR IN THE SOUTHWESTERN REPORTER. SEE REVISED SUPREME COURT RULE 5-2 FOR THE PRECEDENTIAL VALUE OF OPINIONS.

Supreme Court of Arkansas.

James Edward **WHITNEY**, Appellant

v.

Antonio **GUTERRES**, Secretary General, United Nations, et. al., Appellees

No. CV–17–693
Opinion Delivered April 26, **2018**
Rehearing Denied June 7, **2018**

PRO SE PETITION FOR EXTENSION OF TIME TO FILE APPELLANT'S BRIEF; PRO SE PETITION FOR LEAVE TO PROCEED WITH EXCEPTION TO RULE 4–7 OF THE RULES OF THE SUPREME COURT [LINCOLN COUNTY CIRCUIT COURT, NO. 40CV–17–44]

Opinion

JOHN DAN KEMP, Chief Justice

*1 Appellant James Edward **Whitney** appeals from the denial of a pro se petition to proceed in forma pauperis and the denial of a request to file an affidavit of sovereignty. Pending before this court is **Whitney's** petition for an extension of time to file his appellate brief. Also pending is **Whitney's** subsequent pro se petition for leave to proceed with exception to Rule 4–7 of the Rules of the Supreme Court, wherein he alleges that the Lincoln County circuit clerk has refused to provide him with a file-marked copy of the proceedings below, preventing him from filing his brief in compliance with this court's rules.

An appeal from an order that denied a petition for postconviction relief, including civil postconviction remedies, will not be permitted to go forward when it is clear that the *2 appellant could not prevail. *Brown v. State*, 2017 Ark. 232, 522 S.W.3d 791; *Justus v. State*, 2012 Ark. 91. This court has treated civil proceedings such as declaratory-judgment actions as applications for postconviction relief in those instances in which a prisoner seeks relief from the conditions of his or her incarceration. *Neely v. McCastlain*, 2009 Ark. 189, 306 S.W.3d 424.

The record demonstrates that **Whitney** filed in the circuit court a petition to proceed in forma pauperis alleging that he was being illegally detained, and he sought indigent status for the purpose of filing an "affidavit of sovereignty" declaring that he is not a citizen of the United States or subject to its laws. Thus, **Whitney's** affidavit of sovereignty sought relief from the conditions of his incarceration; it is, therefore, treated as an application for postconviction relief. *Neely*, 2009 Ark. 189, 306 S.W.3d 424. Because it is clear that **Whitney** cannot prevail in his appeal from the circuit court's order denying both his petition to proceed in forma pauperis as well as his request to file an "affidavit of sovereignty," this appeal is dismissed, which renders **Whitney's** petition for an extension of time to file his brief and his petition for leave to proceed with exception to Rule 4–7 moot.

The right to proceed in forma pauperis is governed by Arkansas Rule of Civil Procedure 72 (2016). Rule 72(c) conditions the right to proceed in forma pauperis in civil matters upon, among other things, the court's satisfaction that the alleged facts indicate a colorable cause of action. *Penn v. Gallagher*, 2017 Ark. 283. A colorable cause of action is a claim that is legitimate and may reasonably be asserted given the facts presented and the current law or a reasonable and logical extension or modification of it. *Id.*

*3 In his in forma pauperis petition, **Whitney** named international and federal officials as well as officials of Arkansas and Michigan. [1] **Whitney** sought to file, without payment of fees, an affidavit of sovereignty that declared, among other things, that citizenship has

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never been conferred on him by either the United States government or the state governments of Michigan and Arkansas.[2] **Whitney** further asserted in his affidavit of sovereignty that he is subject only "onto the kingdom of YHWH." **Whitney** certified that the affidavit had been mailed to the named respondents. The purpose of the affidavit was to establish that **Whitney** is not subject to federal and state laws and is therefore being illegally detained as "[he] is neither to bend to or conform with their ways or practices ... [but rather] operate[s] as a vessel, ambassador for the expression of the government of the Kingdom of YHWH." **Whitney's** affidavit declaring himself outside the reach of the laws of this state is wholly without merit, as the State of Arkansas has the authority to enforce its laws with regard to *4 conduct that occurs within its territorial borders. *See State v. Alexander*, 222 Ark. 376, 259 S.W.2d 677 (1953); *Goodman v. State*, 153 Ark. 560, 240 S.W. 735 (1922).

The circuit court denied **Whitney's** in forma pauperis petition and denied his request to file the affidavit of sovereignty, concluding that **Whitney** had not stated a colorable cause of action and, indeed, had not "presented a complaint or other document, even if liberally interpreted, that portrays a civil action in compliance with the Arkansas Rules of Civil Procedure." The circuit court further concluded that there is no statutory authority that mandates that a circuit clerk file and maintain an affidavit declaring sovereignty without a related civil action. Our standard of review of a decision to grant or deny a petition to proceed in forma pauperis is abuse of discretion, and the circuit court's factual findings in support of its exercise of discretion will not be reversed unless clearly erroneous. *Penn*, 2017 Ark. 283. Likewise, this court does not reverse a denial of postconviction relief unless the circuit court's findings are clearly erroneous. *Sandrelli v. State*, 2016 Ark. 103, 485 S.W.3d 692. Based on a review of the record, the circuit court did not clearly err when it concluded that **Whitney's** affidavit of sovereignty did not state a colorable cause of action that would entitle him to proceed in forma pauperis and when it denied **Whitney's** request to file a meritless affidavit of sovereignty.

Appeal dismissed; petitions moot.

Hart, J., dissents.

Josephine Linker Hart, Justice, dissenting.
I dissent for the reasons outlined in *Gray v. State*, **2018** Ark. 79, ——S.W.3d —— (Hart, J., dissenting). The only matter properly before us at this juncture is Mr. **Whitney's** Petition for Extension of Time to File *5 Petitioner's Brief. This court does not yet have jurisdiction to rule on the merits of Mr. **Whitney's** substantive petition.

All Citations

Not Reported in S.W.3d, 2018 Ark. 133, 2018 WL 1957077

Footnotes

1 In addition to naming Antonio **Guterres**, Secretary General of the United Nations, **Whitney** named as respondents, Donald Trump, President of the United States; Jeff Sessions, United States Attorney General; Asa Hutchinson, Governor of Arkansas; Leslie Rutledge, Arkansas Attorney General; Rick Snyder, Governor of Michigan; and Bill Schuette, Michigan Attorney General.

2 **Whitney's** citizenship status was apparently revealed to him in a letter he received from an official with the State of Michigan in response to a Freedom of Information Act (FOIA) request made by **Whitney**. In the letter, **Whitney** was informed that he is not a "person" as defined by Michigan's FOIA because he is incarcerated. **Whitney** reasoned that since the State of Michigan (where he was born) had declared that he is not a person and because citizenship cannot be constitutionally eliminated, it follows that citizenship was never conferred on him in the first place. Arkansas similarly denied a FOIA request from **Whitney**, and he extrapolated from this denial that Arkansas had also failed to confer citizenship.

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FORMAL ORDER

STATE OF ARKANSAS,)
) SCT.
SUPREME COURT)

BE IT REMEMBERED, THAT A SESSION OF THE SUPREME COURT BEGUN AND HELD IN THE CITY OF LITTLE ROCK, ON JUNE 7, 2018, AMONGST OTHERS WERE THE FOLLOWING PROCEEDINGS, TO-WIT:

SUPREME COURT CASE NO. CV-17-693

JAMES EDWARD WHITNEY APPELLANT

V. APPEAL FROM LINCOLN COUNTY CIRCUIT COURT - 40CV-17-44

ANTONIO GUTERRES, SECRETARY GENERAL, UNITED NATIONS, ET AL.
APPELLEE

APPELLANT'S PRO SE PETITION FOR REHEARING IS DENIED.

IN TESTIMONY, THAT THE ABOVE IS A TRUE COPY OF THE ORDER OF SAID SUPREME COURT, RENDERED IN THE CASE HEREIN STATED, I, STACEY PECTOL, CLERK OF SAID SUPREME COURT, HEREUNTO SET MY HAND AND AFFIX THE SEAL OF SAID SUPREME COURT, AT MY OFFICE IN THE CITY OF LITTLE ROCK, THIS 7TH DAY OF JUNE, 2018.

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Stacey Pectol
CLERK

BY: _____
DEPUTY CLERK

ORIGINAL TO CLERK

CC: JAMES EDWARD WHITNEY
DAVID R. RAUPP, SENIOR ASSISTANT ATTORNEY GENERAL
HON. JODI RAINES DENNIS, CIRCUIT JUDGE

Additional material from this filing is available in the Clerk's Office.