

INDEX TO APPENDIX

- A. ARKANSAS SUPREME COURT OPINION — — 22
- B. PETITION FOR REHEARING - ARK. SUPREME COURT — 24
- C. CIRCUIT COURT OPINION — — — — 26

Appendix A

Arkansas Supreme Court Opinion

#2020 Ark. 183

Walker v. Kelley

Supreme Court of Arkansas. May 7, 2020. Not Reported in S.W. Rptr. 2020 Ark. 183 2020 WL 2214348 (Approx. 2 pages)

2020 Ark. 183

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.

Jerry WALKER, Appellant

v.

Wendy KELLEY, Director, Arkansas Department of Correction, Appellee

No. CV-19-820

Opinion Delivered May 7, 2020

PRO SE APPEAL FROM THE CHICOT COUNTY CIRCUIT COURT [NO. 09CV-19-63],
HONORABLE ROBERT BYNUM GIBSON, JR., JUDGE

Attorneys and Law Firms**Jerry Walker**, pro se appellant.

Leslie Rutledge, Att'y Gen., by: Jacob H. Jones, Ass't Att'y Gen., for appellee.

Opinion

RHONDA K. WOOD, Associate Justice

***1 Jerry Walker** appeals the denial of his pro se petition for declaratory judgment.

Walker currently serves a sentence in the Arkansas Department of Correction. His petition alleged that errors occurred during his criminal trial. We affirm because one cannot use a declaratory-judgment action to collaterally attack a criminal conviction.

In 2003, **Jerry Walker** was convicted of first-degree murder and second-degree unlawful discharge of a firearm from a vehicle; he was sentenced to an aggregate term of 960 months' imprisonment. The Arkansas Court of Appeals affirmed. **Walker v. State**, 91 Ark. App. 300, 210 S.W.3d 157 (2005) (**Walker I**). **Walker** filed a Rule 37 petition in the trial court raising various postconviction issues. In 2007, the trial court denied the Rule 37 petition. Years later, this court denied **Walker's** request to file a belated appeal. **Walker v. State**, CR-12-824 (Ark. Oct. 25, 2012) (**Walker II**). **Walker** pursued habeas relief in the ***2** federal court, which was also denied. **Walker v. Hobbs**, 2012 WL 550563 (E.D. Ark. Feb. 21, 2012). Subsequently, **Walker** filed a petition for declaratory relief, which is the subject of this appeal.

*** Walker's** petition for declaratory judgment alleged that he was denied due process in his criminal trial when the trial court admitted the prior testimony of an unavailable witness. **Walker** further contended that this admission violated the Confrontation Clause of the United States Constitution. **Walker** attached a partial transcript of the trial proceedings that reflected defense counsel's objection to the admission. This issue was not challenged on direct appeal. See **Walker I**, 91 Ark. App. at 302, 210 S.W.3d at 158 (challenging only the admission of interspousal communication). The circuit court here concluded that **Walker's** petition sought a new trial for which declaratory relief does not lie.¹

We have held that a criminal defendant may not use a declaratory-judgment action for the purpose of challenging a criminal conviction. See *Manning v. Norris*, 2011 Ark. 439 (per curiam). A criminal defendant is required to raise any alleged errors regarding his conviction in the trial court or on direct appeal and may not raise them in a collateral civil proceeding. *Id.* A declaratory-relief action is not a substitute for an appeal of the criminal ***3** conviction. *Id.* To the extent this court considers these civil proceedings, such as declaratory-judgment actions, we do so as applications for postconviction relief in those instances in which a prisoner challenges the constitutionality of the original sentence. *Bailey v. State*, 312 Ark. 180, 848 S.W.2d 391 (1993); see also *Neely v. McCastlain*, 2009 Ark. 189, 306 S.W.3d 424 (holding that a petition for declaratory relief was considered a

petition for postconviction relief). A circuit court's decision granting or denying postconviction relief will not be reversed unless it is clearly erroneous. *Douthitt v. Kelley*, 2019 Ark. 404, 590 S.W.3d 734. A finding is clearly erroneous when the appellate court after reviewing the entire evidence is left with the definite and firm conviction that a mistake has been committed. *Id.*

In the present matter, **Walker's** petition reargued an evidentiary issue that was raised at his criminal trial but waived on direct appeal. A declaratory-judgment action provides no relief on these grounds, and **Walker** has already exhausted his postconviction remedies. The circuit court did not clearly err when it denied **Walker's** petition for declaratory judgment.

Affirmed.

All Citations

Not Reported in S.W. Rptr., 2020 Ark. 183, 2020 WL 2214348

Footnotes

- 1 The circuit court's order did not address **Walker's** petition to proceed in forma pauperis but instead addressed the merits of the underlying petition. This court considers this as if the circuit court determined **Walker** was a pauper and proceeded to consider and deny **Walker** relief on the merits of the petition for declaratory relief. See *Jones v. Ross*, 2019 Ark. 283.

End of

Document

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

APPENDIX B.

Petition For Rehearing
-- Arkansas Supreme Court

OFFICE OF THE CLERK
ARKANSAS SUPREME COURT
625 MARSHALL STREET
LITTLE ROCK, AR 72201

JUNE 18, 2020

RE: SUPREME COURT CASE NO. CV-19-820
JERRY WALKER V. WENDY KELLEY, DIRECTOR, ARKANSAS DEPARTMENT OF
CORRECTION

THE ARKANSAS SUPREME COURT ISSUED THE FOLLOWING ORDER TODAY IN THE
ABOVE STYLED CASE:

“APPELLANT’S PRO SE PETITION FOR REHEARING PURSUANT TO RULE 2-3 IS
DENIED.”

SINCERELY,

A handwritten signature in black ink, appearing to read "Stacey Pectol", written in a cursive style.

STACEY PECTOL, CLERK

CC: JERRY WALKER
JACOB H. JONES, ASSISTANT ATTORNEY GENERAL
CHICOT COUNTY CIRCUIT COURT
(CASE NO. 09CV-19-63)

Appendix C

Circuit Court's Opinion

FILED

2019 AUG 15 AM 9:58

JOSEPHINE GRIFFIN
CHICOT CO. CIRCUIT CLERK

Josephine Griffin

IN THE CIRCUIT COURT OF CHICOT COUNTY, ARKANSAS
CIVIL DIVISION

JERRY WALKER, ADC#124248

PETITIONER

VS.

NO. CV-2019-63-3

WENDY KELLEY,
ADC - DIRECTOR

RESPONDENT

ORDER DENYING PETITION FOR DECLARATORY JUDGMENT

As best this Court can tell by reviewing Petitioner's pleadings, Petitioner is seeking a new trial and using the Declaratory Judgment Act to describe.

PETITION DENIED.

The Clerk is directed to provide a copy of this order to all parties.

IT IS SO ORDERED this 13 day of August, 2019.

Robert Bynum Gibson, Jr.

ROBERT BYNUM GIBSON, JR.
CIRCUIT JUDGE

cc: Petitioner
Respondent
TCA

CHICOT

AUG 15 2019

26

