

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 JANUARY 25, 2018,
AMONGST OTHERS WERE THE FOLLOWING PROCEEDINGS, TO-WIT:

SUPREME COURT CASE NO. CV-17-558

EDMOND MCCLINTON

APPELLANT

V. APPEAL FROM JEFFERSON COUNTY CIRCUIT COURT - 35CV-17-198

STATE OF ARKANSAS

APPELLEE

APPELLANT'S PRO SE PETITION FOR REHEARING IS DENIED. APPELLANT'S
PRO SE PETITION TO CLERK FOR PAYMENT OF AN ADVANCE DEPOSIT OF \$50.00 IS
DENIED. BAKER AND GOODSON, JJ., WOULD NOTE. HART, J., WOULD GRANT.
APPELLANT'S PRO SE MOTION FOR STAY OF THE MANDATE TO LITIGATE
PROCEEDINGS IN THE UNITED STATES SUPREME COURT IS DENIED. BAKER,
GOODSON, AND HART, JJ., WOULD GRANT.

TENDERED \$50.00 DEPOSIT FEE RETURNED VIA CERTIFIED MAIL TO MR.
MCCLINTON.

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 25TH DAY OF JANUARY, 2018.



CLERK

BY: _____

DEPUTY CLERK

ORIGINAL TO CLERK

CC: EDMOND MCCLINTON
CHRISTIAN HARRIS, ASSISTANT ATTORNEY GENERAL
HONORABLE JODIE RAINES DENNIS, CIRCUIT JUDGE

Appendix
D

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ARKANSAS
ELEVENTH JUDICIAL DISTRICT, WEST - FIFTH DIVISION

EDMOND McCLINTON
Inmate # 107846

PETITIONER

v.

No. 35CV-17-198-5

STATE OF ARKANSAS

RESPONDENT

**ORDER DISMISSING PETITION FOR
WRIT OF HABEAS CORPUS**

On this day comes on for consideration the pro se habeas corpus new scientific evidence petition filed on March 27, 2017, and the State's response filed on May 9, 2017. From the examination of the pleadings and review of applicable law, the Court finds as follows:

HISTORY

The petition reflects that on April 28, 2014, a Jefferson County jury convicted the petitioner of rape. He was sentenced as a habitual offender to Life in the Arkansas Department of Correction. His conviction was affirmed on direct appeal.

On February 28, 2017, this Court dismissed petitioner's Rule 37 request for relief. The petitioner filed his notice of appeal on March 14, 2017.

CLAIMS

Petitioner seeks habeas relief pursuant to Ark. Code Ann. 16-112-201 – 208, New Scientific Evidence. Petitioner alleges that his conviction is illegal and he is wrongfully incarcerated. Many of the arguments put forth in this habeas are the same as the arguments in his unsuccessful Rule 37 petition.

HABEAS CORPUS LAW

Arkansas Code Annotated § 16-112-201 provides an avenue for relief from a conviction claiming that: "(1) Scientific evidence not available at trial establishes the petitioner's innocence; or
(2) The scientific predicate for the claim could not have been previously discovered through the

50

FILED AT 10:20 O'CLOCK A

JUN -8 2017

LAFAYETTE WOODS, JR., CIRCUIT CLERK
JEFFERSON COUNTY, ARKANSAS

Cheri L...

exercise of due diligence and the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable fact-finder would find the petitioner guilty of the underlying offense.”

ANALYSIS

Petitioner alleges that he was convicted by evidence that was illegally obtained; the trial judge permitted the introduction of hearsay evidence; the State failed to establish a proper chain of custody in reference to the rape kit and its results were improperly admitted into evidence; there was no evidence of sexual intercourse; evidence collected at the crime scene was not subjected to any DNA testing; the conviction was obtained on insufficient evidence; and that all of these errors occurred due to ineffective assistance of counsel. The allegations, sans scientific testing, are not cognizable in a petition pursuant to Act 1780 of 2001. Ark. Code Ann. § 16-112-201 – 208 does not provide a substitute for a petition pursuant to ARCrP 37.1 and it does not provide a substitute for a petition for writ of error coram nobis. *Graham v. State*, 358 Ark. 296, 188 S.W.3d 893 (2004).

A petitioner who seeks relief must identify evidence for testing that meets specific criteria set out in the statute, and the evidence identified must meet certain predicate requirements. *Clemons v. State*, 2014 Ark. 454, 446 S.W.3d 619; *Marshall v. State*, 2017 Ark. 208 (2017). One of the predicate requirements is that the petitioner's identity was at issue during either the investigation or prosecution of the crime. Ark. Code Ann. § 16-112-202(7); *Strong v. State*, 2010 Ark. 181, 372 S.W.3d 758 (2010). The identity of the petitioner was not an issue in his trial.

The evidence that petitioner wants tested, regardless of the results of the test, cannot establish a reasonable probability that the petitioner did not commit the offense. *Wells v. State*, 2017 Ark. 88, 513 S.W.3d 834 (2017). A habeas corpus petition must be based on new scientific evidence proving a person actually innocent of the offense for which he was convicted. Ark. Code Ann. § 16-112-201; *Pankau v. State*, 2013 Ark. 162. The petitioner asks to test items that were available for

testing at the time of trial and he does not claim that new testing methods have become available through advances in technology. Ark. Code Ann. §§ 16-112-201(a)(1), 16-112-202; *Hill v. State*, 2009 Ark. 196 (2009).

Additionally, the petitioner fails to identify a theory of defense and he does not state that the testing would raise a reasonable probability that he did not commit the rape. Ark. Code Ann. § 16-112-202(6) & (8).

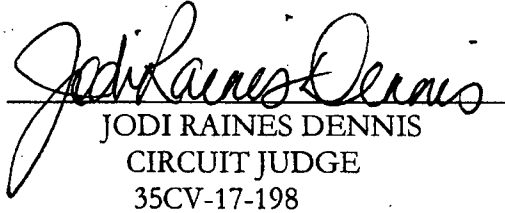
RULING

The petitioner has failed to establish that he is entitled to the relief he seeks.

The petition fails to state a claim upon which relief may be granted; therefore, pursuant to Ark. Code Ann. § 16-68-607, this civil action constitutes one "strike."

Therefore, the petition is hereby DISMISSED.

IT IS SO ORDERED this 5th day of June, 2017.


JODI RAINES DENNIS
CIRCUIT JUDGE
35CV-17-198

cc: Mr. Edmond McClinton
Inmate # 107846
Cummins Unit
P. O. Box 500
Grady, AR 71644

Ms. Karres Manning
Deputy Prosecuting Attorney