IN THE CIRCUIT COURT OF CRAIGHEAD COUNTY, ARKANSAS
WESTERN DISTRICT

CHARLES JASON BALDWIN PETITIONER

NO. CR 93-450B

STATE OF ARKANSAS RESPONDENT

RESPONSE TO AMENDED PETITION FOR RELIEF UNDER A.R.Cr.P. 37

Comes now the State of Arkansas, by and through counsel, Brent Davis, Prosecuting Attorney, Second Judicial District, Dustin McDaniel, Attorney General, and David R. Raupp, Senior Assistant Attorney General, and for its response states:

1. Baldwin has filed an amended Rule 37 petition asserting six bases for relief. Because five of his bases for relief are not cognizable under Rule 37 and the one cognizable basis makes ineffective-assistance claims only conclusorily, the Court may deny him relief without a hearing. Nevertheless, because the Court has set a status hearing for August 20, 2008, and hearing dates in September for his case, the State anticipates that, despite Baldwin's deficient pleading, the Court may indulge him the opportunity to refine the number (and quality) of his claims to be entertained. Thereafter, the State further anticipates that post-hearing briefing on the law and proof, *vel non*, of the remaining claims will join the issues for resolution by the Court. With those likely possibilities in mind, the State responds, for present purposes, to explain why Baldwin may be denied relief without a hearing.

2. Baldwin's bases for relief numbered I through IV and VI are not cognizable in Rule 37 proceedings, and he offers no argument or citation to authority to suggest that they are, and for good reason. The law is to the contrary. His first

basis—that he is actually innocent of his crimes—is, of course, the claim he makes in his companion petition for habeas corpus relief and a new trial filed in this Court pursuant to Ark. Code Ann. §16-112-201, *et seq.* (Act 1780 of 2001). His assertion of actual innocence alleges no error in the proceedings by which he was convicted and is, consequently, simply outside the scope of Rule 37. See generally A.R.Cr.P. 37.1(a) (2008); cf. Graham v. State, 358 Ark. 296, 298, 188 S.W.3d 893, 895 (2004) (per curiam) (Act 1780 not substitute for Rule 37 or coram-nobis proceedings, but provides narrow post-conviction review for claims of actual innocence).

To the extent that his introductory paragraph of his bases for relief relies on Johnson v. State, 356 Ark. 534, 157 S.W.3d 151 (2004), to suggest otherwise, see Pet. at ¶4, he is wrong. Johnson, like Baldwin, filed two distinct pleadings in circuit court, and the circuit court denied Johnson relief in separate orders. Id. at 541, 157 S.W.3d at 157. That the supreme court entertained appeals of those orders in one appellate case is no demonstration that the claims and their distinct rule and statutory frameworks are interchangeable. Baldwin's actual-innocence claim is not cognizable here and should be denied as explained in the State's response to his separate petition.

Baldwin's second and third bases—that he was denied a right to a fair and impartial jury and particular cross-examination of Michael Carson—are direct challenges that should have been, or were, raised on direct review. Consequently, they are not cognizable in Rule 37 proceedings. See, e.g., Howard v. State, 367 Ark. 18, 26, 238 S.W.3d 24, 32 (2006); see also Davis v. State, 345 Ark. 161, 169, 44 S.W.3d 726, 730 (2001) (Rule 37 not opportunity to reargue points settled on direct

appeal). Apart from their not being cognizable, see, e.g., Howard, 367 Ark. at 29, 238 S.W.3d at 33-34, Baldwin has, in part, also unsuccessfully sought leave to pursue his jury claims in error-coram-nobis proceedings. See Baldwin v. State, No. CR 94-928 (Ark. Jun. 26, 2008) (Orders List). Several years ago, the Arkansas Supreme Court flatly rejected his codefendant Damien Echols's similar request. Echols v. State, 360 Ark. 332, 201 S.W.3d 890 (2005). Baldwin's cross-examination claim was raised and rejected on direct appeal. Echols v. State, 326 Ark. 917, 973, 936 S.W.2d 509, 538 (1996).

Baldwin's fourth and sixth bases similarly fail. His prosecutorial misconduct claims, advanced as his fourth basis, are not cognizable. See generally, e.g. Howard, 367 Ark. at 27, 238 S.W.3d at 32. Such claims founded on Brady v. Maryland, 373 U.S. 83 (1963), must be diligently pursued in error-coram-nobis proceedings, which are not interchangeable with Rule 37 proceedings. See generally Larimore v. State, 327 Ark. 271, 938 S.W.2d 818 (1997). As for his grapefruit-demonstration misconduct claim, because it was raised on direct appeal, see Echols, 326 Ark. at 993, 936 S.W.2d at 549, it is not cognizable here. Finally, Baldwin's sixth basis, actual or constructive denial of counsel, also is not cognizable because it is a claim of cumulative error, see Pet. at ¶11, which is not cognizable. See, e.g., Howard, 367 Ark at 50, 238 S.W.3d at 48.

For all these reasons, the Court should reject Baldwin's first, second, third, fourth, and sixth bases for relief without a hearing because none is cognizable in Rule 37 proceedings.

3. Baldwin's ineffective-assistance claims (all raised in his fifth basis for relief) are conclusorily pleaded and, for that reason alone, cannot support relief. See, e.g., Jackson v. State, 352 Ark. 359, 371, 105 S.W.3d 352, 360 (2003). Indeed, a circuit "court need not hold an evidentiary hearing where it can be conclusively shown on the record, *or the face of the petition itself*, that the allegations have no merit." Greene v. State, 356 Ark. 59, 66, 146 S.W.3d 871, 87 (2004) (citation omitted, emphasis added).

Baldwin purports to raise innumerable claims of ineffective assistance in 16 lettered paragraphs, some of which, in turn, contain several claims, all in just under five pages.[1] Each claim offers only bare allegations of deficiency, and many dispute strategic decisions about what witnesses should have been called, which ordinarily cannot support relief as it presents only debate about trial tactics. See, e.g., Rankin v. State, 365 Ark. 255, 259-60, 227 S.W.3d 924, 928 (2006); see also Echols v. State,

[1]By way of example, it is impossible to know what Baldwin is arguing (or, worse still, what he could not argue) was deficient in trial counsel's failure "to adequately and effectively prepare this case for trial within the meaning of Strickland v. Washington, 466 U.S. 668 (1984)." Pet. at ¶10(a). Even if that paragraph is only meant to serve as an introduction, subsequent ones listing alleged failures shed scant more light on the details of any claim, particularly as he offers not a single citation to any supporting exhibit in reciting them (or throughout his amended petition), despite his submission of over 75 exhibits with this and his petition for habeas corpus and motion for new trial. It is axiomatic that neither the State nor the Court is obligated to search out proof of his claims for him.

354 Ark. 530, 554, 127 S.W.3d 486, 501 (2003) (same principle applies to expert witnesses). Moreover, most claims make no allegation (to say nothing of a showing) of prejudice. Indeed, the only statements about prejudice are few and made wholly conclusorily by the occasional mere *ipse dixit* that he "would have been acquitted," had counsel done or not done certain things.

Given Baldwin's admission of the crimes as noted on direct appeal, Echols, 326 Ark. at 941, 936 S.W.2d at 519-20, however, he can hardly demonstrate prejudice under Strickland v. Washington, 466 U.S. 668 (1984), from any of his many claims of counsel's deficiency without an explication of the trial proof and a discussion of how, but for a given alleged deficiency, he probably would have been acquitted.[2] Indeed, it is inconceivable that his claims merit serious review in the absence of any references in his petition to the trial record to even suggest (to say nothing of demonstrate) prejudice—that is, the reasonable probability of a different outcome, acquittal of capital murder—which it is his burden now to show. As the Supreme Court noted in Strickland, 466 U.S. at 697:

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[2]Baldwin's bare references to unspecified "supporting exhibits," e.g., Pet. at ¶¶10(b) & (h), are inadequate to meet his burden to state his claims fully in his petition, particularly as to a showing of prejudice. Moreover, he cannot rely on his separate pleading seeking relief under Ark. Code Ann. §16-112-201 *et seq.*, as he appears to believe, in order to meet his Rule 37 burdens here. As already explained, the two proceedings simply are not interchangeable. Finally, any reliance on that pleading would circumvent the ten-page limit of A.R.Cr.P. 37.1(b), without his having sought or obtained permission to file an over-length petition.

> [A] court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. The object of an ineffectiveness claim is not to grade counsel's performance. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed. Courts should strive to ensure that ineffectiveness claims not become so burdensome to defense counsel that the entire criminal justice system suffers as a result.

Baldwin's conclusory effort is adequate reason to deny him relief without a hearing.

4. . In the event, however, that the Court does not deny Baldwin Rule 37 relief without a hearing for the reasons recited above, the State seeks permission to file a post-hearing brief. At a hearing, Baldwin presumably will endeavor to demonstrate fewer, discrete, and serious claims in adequate detail to permit the State to respond to them.

WHEREFORE, the State respectfully asks that this Court deny Baldwin Rule 37 relief without a hearing as suggested by this response or permit post-hearing briefing as to claims the Court permits Baldwin to advance at a hearing.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

I, David R. Raupp, Senior Assistant Attorney General, do hereby certify that I have served a copy of the foregoing pleading, by mailing a copy of same, by U.S. Mail, postage prepaid, to counsel for petitioner this 14th day of July, 2008, as follows:

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