

**FILED**

08 AUG 11 AM 9:54

IN THE CIRCUIT COURT OF CRAIGHEAD COUNTY, ARKANSAS  
WESTERN DIVISION

ANN ROSSON  
CIRCUIT COURT CLERK  
PETITIONER

CHARLES JASON BALDWIN

vs.

No. CR 93-450

STATE OF ARKANSAS

RESPONDENT

**BALDWIN'S INITIAL REPLY TO THE STATE'S REPOSE TO  
AMENDED PETITION FOR RELIEF UNDER ARKANSAS RULES OF CRIMINAL  
PROCEDURE 37**

The petitioner, Charles Jason Baldwin, through his attorneys, John T. Philipsborn and J. Blake Hendrix, submits the following reply to the State's Response to Baldwin's Amended Petition for Relief Under Arkansas Rules of Criminal Procedure 37.

1. In its Response, the State argued that five of Baldwin's six claims for relief are not cognizable under Rule 37 and should be dismissed without a hearing. Those claims are: 1) that Baldwin is actually innocent, 2) that he was denied the right to a fair and impartial jury, 3) that his right to cross-examine witness Michael Carson was unconstitutionally restricted, 4) prosecutorial misconduct, and 5) that he was actually or constructively denied counsel. The State's position is that even if the facts underlying these grounds for relief are accepted as true, none can be raised in a Rule 37 petition, and the Court should dismiss the claims as a matter of law. The State recognized that Baldwin's remaining claim - of ineffective assistance of counsel - is cognizable under Rule 37, but argued that it, too, should be dismissed without a hearing.

2. Baldwin replies that the State is incorrect in its legal arguments. It is well settled that claims of error so fundamental as to render the judgment of conviction void and therefore subject to collateral attack are cognizable in a Rule 37 proceeding. See *Rowbottom v. State*, 341

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Ark. 33, 13 S.W.3d 904 (2000), relying on *Collins v. State*, 324 Ark. 322, 920 S.W.2d 846 (1996), and *Finley v. State*, 295 Ark. 357, 748 S.W.2d 643 (1988). Through these, and other, decisions, the Arkansas Supreme Court recognized several claims so basic that, if breached, the judgment is a complete nullity. These include claims that trial counsel was ineffective, that the defendant was tried by a jury of less than twelve citizens, that the trial court had no jurisdiction, and that the defendant was twice put in jeopardy for the same offense. See *Davis v. State*, 345 Ark. 161, 44 S.W.3d 726 (2001).

3. Since Baldwin's amended claims developed as evidence became available, it is clear it is not meant to be an all-inclusive list to the exclusion of all other claims. Any claim that would render *this* judgment void should be considered. For example, Baldwin's claim of actual innocence should render the convictions void. If he demonstrates that he is innocent, the judgment is a nullity. The Arkansas Supreme Court has never explicitly held that a claim of actual innocence is not cognizable in a Rule 37 proceeding.

4. Baldwin contends that each of his claims is so fundamental that the Court should find his judgments of conviction void. Necessarily, this involves a legal interpretation of the scope of Rule 37 relief, especially given the State's failure to submit evidence supporting its opposition, except with respect to medical and one other forensic science issue. To that limited extent, Baldwin agrees with the State that the Court can and should make this determination as a matter of law.

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Finally, like the State, Baldwin respectfully moves this Court for permission to file a post-hearing brief. In a separate pleading, he is filing a motion for permission to enlarge his Amended Rule 37 petition in the manner discussed by the State

Dated: August 8, 2008

Respectfully Submitted by

PETITIONER CHARLES JASON BALDWIN

  
\_\_\_\_\_  
J. BLAKE HENDRIX  
Attorney for Charles Jason Baldwin

  
\_\_\_\_\_  
JOHN T. PHILPSBORN  
Attorney for Charles Jason Baldwin

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**PROOF OF SERVICE**

I, Steven Gray, declare:

That I am over the age of 18, employed in the County of San Francisco, California, and not a party to the within action; my business address is 507 Polk Street, Suite 350, San Francisco, California 94102.

On today's date, I served the within document entitled:

**BALDWIN'S INITIAL REPLY TO STATE RESPONSE TO AMENDED  
PETITION FOR RELIEF UNDER ARKANSAS RULE OF CRIMINAL  
PROCEDURE 37**

- (x) By placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the U.S. Mail at San Francisco, California, addressed as set forth below;
- (x) By electronically transmitting a true copy thereof;
- ( ) By serving a true copy by facsimile

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 8<sup>th</sup> day of August, 2008, at San Francisco, California.

Signed: \_\_\_\_\_

  
Steven Gray

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