

# ARKANSAS SUPREME COURT

No. CR 07-171

TERRY LYNN CASEY  
Petitioner

v.

STATE OF ARKANSAS  
Respondent

Opinion Delivered      January 30, 2009

PRO SE MOTION UNDER COURT  
RULE 2.2 FOR INEFFECTIVE  
ASSISTANCE OF COUNSEL [CIRCUIT  
COURT OF GRANT COUNTY, CR  
2005-23, CR 2005-32, HON. PHILLIP  
SHIRRON, JUDGE]

MOTION TREATED AS SECOND  
MOTION TO FILE BELATED  
PETITION FOR REVIEW AND  
DENIED.

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## PER CURIAM

Now before us is the pro se motion for ineffective assistance of counsel filed by petitioner Terry Lynn Casey in this court on August 15, 2008. The motion is treated as petitioner's second motion to file a belated petition for review of a 2006 appellate decision. For the reasons stated herein, the motion is denied.

In 2005, petitioner entered a conditional plea of guilty on two counts each of residential burglary and theft of property and was sentenced by a jury. Petitioner then appealed the trial court's denial of petitioner's motion to suppress items seized from the trunk of his car, and the Arkansas Court of Appeals affirmed. *Casey v. State*, 97 Ark. App. 1, 242 S.W.3d 627 (2006).

In 2007, petitioner filed in this court a pro se motion to file a belated petition for review of the court of appeals' decision. The petition was untimely as it was filed more than eighteen days after the court of appeals issued its decision and was denied because petitioner showed no good cause to file a belated petition for review. *Casey v. State*, CR 07-171 (Ark. Mar. 15, 2007) (per

curiam).

Subsequently, petitioner filed the instant motion. At the core, petitioner seeks a belated review by this court of the ruling by the court of appeals, making this motion the second such request to this court. In support, he now contends that trial counsel was ineffective for failing to pursue, or allowing petitioner to pursue, a timely-filed petition for review.

Without reaching the underlying issue, if ineffective assistance of counsel has been shown, it does not present good cause for petitioner's failing to timely file a petition for review. Moreover, even if petitioner had provided good cause for failing to timely file a petition for review, he would not be able to demonstrate that the jurisdiction of this court would be properly invoked.

Under Supreme Court Rule 2-4(c), petitions for review are limited to instances in which the decision of the court of appeals at issue resulted from either a tied vote or was in conflict with a prior appellate ruling. Alternatively, the appeal must have been originally subject to the jurisdiction of this court as set out in Supreme Court Rule 1-2(b).<sup>1</sup>

Here, the ruling by the court of appeals was not decided by a tied vote or in conflict with a prior appellate ruling. In addition, petitioner could not have been able to file the direct appeal in this court as jurisdiction over the matter would not have been conferred under Rule 1-2(b). Thus, pursuant to Rule 2-4(c), no basis exists here for this court to consider a petition for review.

Motion treated as second motion to file belated petition for review and denied.

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<sup>1</sup>Supreme court jurisdiction is limited to issues concerning (1) a case of first impression, (2) inconsistent decisions, (3) federal constitutional interpretation, (4) substantial public interest, (5) significant legal issues needing clarification or development, and (6) substantial questions of law pertaining to legislation.