

Charles E. LEWIS *v.* STATE of Arkansas

633 S.W.2d 371

Supreme Court of Arkansas
Opinion delivered May 24, 1982

1. **APPEAL & ERROR — ATTORNEY'S DUTY TO MAINTAIN RECORD ON APPEAL AND SEE IT IS TIMELY FILED.** — It is the duty of the attorney to see that the record on appeal is properly maintained and timely filed.
2. **APPEAL & ERROR — APPEAL ACCEPTED WHERE TO DO OTHERWISE COULD DENY RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL.** — An appeal will be accepted where to do otherwise could be a denial of the appellant's constitutional right to effective assistance of counsel.

Motion for belated appeal; motion granted.

Petitioner, *pro se*.

Steve Clark, Atty. Gen., by: *Alice Ann Burns*, Asst. Atty. Gen., for appellee.

PER CURIAM. On March 16, 1981 Charles E. Lewis was convicted of possession of a controlled substance with intent to deliver. He was sentenced to a ten-year term of imprisonment and fined \$2,000. He was represented at trial by Robert F. Morehead, who has never been relieved as counsel of record in the case.

Lewis, acting *pro se*, has filed a motion for belated appeal in which he alleges that his attorney was aware of his desire to appeal but failed to file the record in this Court. Lewis also requests that his appeal bond be reinstated and that an attorney other than Mr. Morehead be appointed to represent him on appeal.

In an affidavit filed in response to the motion, the attorney concedes that he told Lewis to get the record from the court reporter and take it to the Supreme Court Clerk. Instead, Lewis mailed the record to the attorney who then attempted to file it. Since the record was not complete, however, it was not accepted by the Clerk. Apparently, the record was subsequently completed by the court reporter but

no further attempt was made to lodge it with this Court. The attorney implies that he did not seek to file the record again because his client could not decide at that point whether he wanted to pursue the appeal.

It is the duty of the attorney to see that the record on appeal is properly maintained and timely filed. Attorney Morehead's affidavit gives no good reason for his failure to lodge the record. This Court will accept an appeal in a criminal case where to do otherwise could be a denial of the appellant's constitutional right to effective assistance of counsel. *Moore v. State*, 267 Ark. 548, 592 S.W.2d 450 (1980). In this case, we must conclude that the record was not lodged by virtue of the attorney's error and grant Lewis' pro se motion for belated appeal. See, our Per Curiam opinion dated February 5, 1979, In Re: Belated Appeals in Criminal Cases.

Appellant's request to have Mr. Morehead relieved as counsel and his request to have the appeal bond reinstated are denied.

A copy of this opinion will be forwarded to the Committee on Professional Conduct.

Motion for Belated Appeal granted.