

Herbert MALONE v. STATE of Arkansas

CR 86-206

724 S.W.2d 180

Supreme Court of Arkansas
Opinion delivered February 23, 1987

1. ATTORNEY & CLIENT — DUTY OF ATTORNEY TO REPRESENT CONVICTED DEFENDANT THROUGHOUT ANY APPEAL. — An attorney has a duty to continue to represent a convicted defendant throughout any appeal unless permitted to withdraw by the trial court or the appellate court in the interest of justice or for other sufficient cause. [Rule 36.26, A.R.Cr.P.]
2. ATTORNEY & CLIENT — ANIMOSITY BETWEEN A CRIMINAL DEFENDANT AND HIS ATTORNEY INSUFFICIENT CAUSE TO REPLACE THE ATTORNEY. — The fact that animosity exists between a criminal defendant and his attorney is not sufficient cause to replace the attorney.
3. CONSTITUTIONAL LAW — RIGHT OF CRIMINAL DEFENDANT TO

ATTORNEY. — A criminal defendant has a right to an attorney but not a right to an attorney of his own choosing.

4. APPEAL & ERROR — MOTION TO BE RELIEVED AS ATTORNEY FOR CRIMINAL DEFENDANT — NO REASON TO PERMIT SUBSTITUTION UNDER CIRCUMSTANCES. — Where nothing is presented to the court that indicates an attorney cannot do a competent job, there is no reason to permit a substitution of counsel that will only delay the appellate process.

Motion to relieve counsel; motion denied.

William L. Wharton and appellant, pro se.

Steve Clark, Att’y Gen., by: Theodore Holder, Asst. Att’y Gen., for appellee.

PER CURIAM. William L. Wharton has filed a petition asking to be relieved as counsel on appeal for appellant, Herbert Malone. A pro se motion has been filed by Malone seeking the same relief. Both parties explain that a conflict has developed between them such that Wharton can no longer serve as counsel. We deny the petition.

[1] Arkansas R. Crim. P. Rule 36.26 states that an attorney has a duty to continue to represent a convicted defendant throughout any appeal unless permitted to withdraw by the trial court or this court “in the interest of justice or for other sufficient cause.”

[2-4] The “interest of justice” does not require that Wharton be relieved as counsel. While it is obvious from the correspondence attached to Wharton’s motion as exhibits that animosity exists between Malone and the attorney, that is not sufficient cause to replace Wharton. Malone has a right to an attorney on appeal, but he does not have a right to an attorney of his choosing. *See Urquhart v. State*, 275 Ark. 486, 631 S.W.2d 304 (1982). Nothing has been presented to this court that indicates Wharton cannot do a competent job on appeal, and there is no reason to permit a substitution of counsel that will only serve to delay the appellate process.

Accordingly, both motions are denied.