

Theodore Clark STEWART v. STATE of Arkansas

CR 87-159

737 S.W.2d 161

Supreme Court of Arkansas  
Opinion delivered October 5, 1987

1. **CRIMINAL PROCEDURE — POSTCONVICTION RELIEF — PETITIONER ENTITLED TO APPEAL ADVERSE RULING.** — A petitioner under A.R.Cr.P. Rule 37 is entitled to appeal an adverse ruling in accordance with Rule 37.3(b).
2. **ATTORNEY & CLIENT — OBLIGATION TO REPRESENT PETITIONER THROUGH APPEAL ON RULE 37 PETITION.** — The obligation of the attorney representing the petitioner is the same as in any appeal; that is, counsel shall continue to represent his client throughout an appeal unless permitted to withdraw by the trial court or the supreme court.
3. **ATTORNEY & CLIENT — MOTION FOR APPOINTMENT OF COUNSEL GRANTED.** — Where the supreme court found appellant to be indigent and found his trial counsel had not been relieved by either the supreme court or the trial court, making him responsible for continuing his representation of the petitioner, the supreme court appointed trial counsel as counsel on appeal.

Pro Se Motion for Appointment of Counsel; granted.

*Appellant*, pro se.

No objection.

PER CURIAM. In 1981 appellant Theodore Clark Stewart was found guilty of burglary and sentenced as an habitual offender to thirty years imprisonment in the Arkansas Department of Correction. In 1984 his retained attorney Robert Newcomb filed in the trial court a timely petition for postconviction relief pursuant to Criminal Procedure Rule 37. No action was taken on the petition until April 1987 when it was denied. Petitioner then filed a *pro se* notice of appeal and the record has now been lodged here. The appellant avers that he is indigent and requests appointment of counsel for the appeal.

[1-3] A petitioner under Rule 37 is entitled to appeal an adverse ruling in accordance with Rule 37.3(b). The obligation of the attorney representing the petitioner is the same as in any appeal; that is, counsel shall continue to represent his client throughout an appeal unless permitted to withdraw by the trial court or this court. *See Gay v. State*, 288 Ark. 589, 707 S.W.2d 320 (1986). The timely notice of appeal filed by the petitioner here is proof that he desired an appeal. It cannot be discerned from the record whether he specifically notified counsel that he had filed a notice of appeal, but there is nothing in the record to indicate that counsel had been relieved as attorney-of-record and therefore he remained responsible for knowing what had been filed in regard to the case. As Robert Newcomb had not been relieved by either this court or the trial court, he is responsible for continuing his representation of the petitioner. We find petitioner to be indigent and appoint Mr. Newcomb counsel on appeal.

Motion granted.