

Theodis KELLY *v.* STATE of Arkansas

CR 01-00278

39 S.W.3d 447

Supreme Court of Arkansas  
Opinion delivered March 29, 2001

ATTORNEY & CLIENT — MOTION TO BE RELIEVED — GRANTED FOR GOOD CAUSE. — Where a state-salaried, part-time public defender was ineligible for compensation by the supreme court for work performed in the appeal of the matter in question pursuant to a recent opinion, and the supreme court had relieved other public defenders and appointed new counsel on appeal under similar circumstances, the attorney's motion to be relieved for good cause shown was granted.

Motion to Withdraw as Attorney on Direct Appeal; granted.

*Don Ethery*, for appellant.

No response.

**P**ER CURIAM. Don Ethery, a state-salaried, part-time public defender for the First Judicial District, was appointed by the trial court to represent appellant Theodis Kelly, an indigent defendant, in this criminal case. Following a jury trial that concluded on December 7, 2000, Kelly was convicted of first-degree murder and sentenced to fifty-five years in the Arkansas Department of Correction. A notice of appeal from the judgment of conviction was timely filed and a partial record has been lodged with our clerk.

[1] Mr. Ethery now asks this court to relieve him as counsel for Kelly in this criminal appeal. As a state-salaried, part-time public defender for the First Judicial District, Mr. Ethery is ineligible for compensation by this court for work performed in the appeal of this matter pursuant to our opinion in *Rushing v. State*, 340 Ark. 84, 8 S.W.3d 489 (2000). In *Tester v. State*, 341 Ark. 281, 16 S.W.3d 227 (2000), we relieved appellant's court-appointed public defender and appointed new counsel on appeal under similar circumstances. See also, *Craft v. State*, 342 Ark. 57, 26 S.W.3d 584 (2000); *McFerrin v. State*, 342 Ark. 61, 26 S.W.3d 429 (2000); *Bolton v. State*, 342 Ark. 55, 26 S.W.3d 783 (2000). We grant Mr. Ethery's motion to be

relieved for good cause shown. Mr. Robert L. Herzfeld will be substituted as attorney for appellant Theodis Kelly in this matter.

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