

David NUEHRING *v.* STATE of Arkansas

CR 01-1341

68 S.W.3d 298

Supreme Court of Arkansas  
Opinion delivered March 7, 2002

1. APPEAL & ERROR — MOTION FOR RULE ON CLERK — GOOD CAUSE FOR GRANTING. — An admission by an attorney for a criminal defendant that he took no action on appellant's requests to proceed with an appeal is good cause to grant a motion for rule on the clerk.
2. APPEAL & ERROR — APPOINTED COUNSEL RELIEVED WHERE ORIGINAL COUNSEL CONTINUED AS APPELLANT'S COUNSEL — MOTION TO FILE BELATED APPEAL GRANTED. — Where, on remand to settle the record, the trial court found that the attorney appointed from the Public Defender's Office was relieved as counsel and that appellant's original counsel, who had never requested to be relieved, continued to be appellant's counsel, appellant's motion to file a belated appeal was granted.

Motion for Rule on the Clerk; granted.

*William R. Simpson, Jr.*, Public Defender, by: *Deborah R. Salings*, Deputy Public Defender, for appellant.

No response.

**P**ER CURIAM. On December 4, 2001, petitioner, David Nuehring, by and through his attorney, Deborah R. Salings, filed a motion for a belated appeal and for determination of appellate counsel on appeal. On January 17, 2002, this court issued a *per curiam* remanding this case to the trial court to settle the record in order to determine whether attorney Michael Sherwood was relieved of his responsibility to represent appellant on appeal, and whether appellant requested that Mr. Sherwood file a notice of appeal on appellant's behalf. We declined to rule on the issue of who was to represent him during his appeal until the record was settled.

[1] On February 19, 2002, the record was settled in compliance with our mandate, and the motion for belated appeal and for determination of appellate counsel was resubmitted to the court. At this hearing, Mr. Sherwood did not dispute that he took no action

---

on appellant's requests to proceed with an appeal. We find that such an error, admittedly made by an attorney for a criminal defendant, is good cause to grant the motion. See *In re Belated Appeals in Criminal Cases*, 265 Ark. 964 (1979) (*per curium*).

The trial court also found that the attorney appointed from the Public Defender's office, Deborah R. Sallings, was relieved as counsel and that Mr. Sherwood, who never requested to be relieved as counsel, continued to be appellant's counsel.

[2] Now that the record has been settled, we can rule on the motion to file a belated appeal, and therefore it is granted. A copy of this opinion will be forwarded to the Committee on Professional Conduct.

---