

Jose Luis VALENZUELA v. STATE of Arkansas

CA CR 03-373

160 S.W.3d 345

Supreme Court of Arkansas
Opinion delivered April 22, 2004

APPEAL & ERROR — MOTION TO DISMISS APPEAL — MOTION HELD IN ABEYANCE & BRIEFING TIME TEMPORARILY STAYED. — At the time the State filed its motion to dismiss, appellant's time to file a belated brief under Ark. R. App. P.—Crim. 2(e) (2003), had not expired; in light of the appellant's right to an appeal under Ark. R. App. P.—Crim. 1, the supreme court held that the time for filing the State's brief, originally due on February 9, 2004, should be extended until June 30, 2004.

Motion to Dismiss Appeal; motion held in abeyance & briefing time temporarily stayed.

Charles E. Waldman, for appellant.

Mike Beebe, Att’y Gen., by: *Misty Wilson Borkowski*, Ass’t Att’y Gen., for appellee.

PER CURIAM. The State has filed a motion to dismiss Jose Valenzuela’s appeal, claiming that certain jurisdictional grounds have not yet been addressed in this case. A brief chronology reveals that Valenzuela filed his notice of appeal from the conviction in this case one day late, and the trial court dismissed the appeal. Then, within thirty days, Valenzuela filed a notice of appeal from the dismissal order. Both notices were filed on Valenzuela’s behalf by Charles Waldman, an attorney who is not licensed to practice law in the State of Arkansas. The State contends that, for this reason, both notices of appeal were wholly ineffective, and therefore, an appellate court has no jurisdiction over an appeal in this case.

In addition, disciplinary proceedings are pending against Charles Waldman in another case before this court. Mr. Waldman appeared on January 15, 2004, to show cause why he should not be held in civil contempt. At that time, he denied that contempt sanctions were appropriate, and a special master, Judge John Cole, was appointed to conduct a hearing on the matter. See *McKenzie v. State*, 356 Ark. 122, 146 S.W.3d 892 (2004) (*per curiam*). A hearing before Judge Cole on the contempt charge is scheduled for May 24, 2004.

[1] At the time the State filed its motion to dismiss, appellant’s time to file a belated appeal under Ark. R. App. P.—Crim. 2(e) (2003), had not expired. In light of the appellant’s right to an appeal under Ark. R. App. P.—Crim. 1, we hold that the time for filing the State’s brief, originally due on February 9, 2004, should be extended until June 30, 2004.