

Damien ECHOLS *v.* STATE of Arkansas

CR 94-928

912 S.W.2d 11

Supreme Court of Arkansas  
Opinion delivered January 8, 1996

APPEAL & ERROR — REMAND LEFT IN EFFECT FOR FACTUAL DETERMINATION BY TRIAL COURT OF APPELLANT'S COMPETENCY WITH RESPECT TO ABANDONMENT OF DEATH-PENALTY ISSUES ON APPEAL. — Where, appellant's case having been remanded to the trial court for a determination of whether appellant was competent to make a rational decision about abandoning death-penalty arguments on appeal, appellant subsequently filed a motion to withdraw his request that the supreme court not consider the death-penalty issues and to ask that the court proceed with the full appeal, and the State responded by asking that the supreme court leave the remand in effect for a factual determination by the trial court of appellant's competency, arguing that the development of the record would best protect the interests of appellant and the State in future proceedings, the supreme court held that the response had merit and left the remand in effect, noting that it would proceed with the appeal upon certification of the trial court's findings.

Motion to Withdraw Pro Se Request to Waive Death Penalty Issues on Appeal; granted.

*Paul N. Ford* and *George R. Wadley*, for appellant.

*Winston Bryant*, Att'y Gen., by: *David R. Raupp*, Asst. Att'y Gen., for appellee.

PER CURIAM. Appellant Damien Echols was found guilty of three counts of capital murder and was sentenced to death on each of the three counts. His attorneys filed the record, abstracts, and briefs with the assignments of error including both the guilt-innocence and the penalty phases of the trial. Echols, acting *pro se*, filed a motion requesting that this court consider only the guilt-innocence points of appeal and not the arguments involving the death penalty. On July 17, 1995, we remanded the matter to the trial court for a determination of whether appellant had been advised by counsel of the consequences of abandoning the points of appeal concerning the death penalty and whether appellant

was competent to make a rational decision about abandoning the death penalty arguments. *Echols v. State*, 321 Ark. 497, 902 S.W.2d 781 (1995).

[1] Appellant has now filed a motion to withdraw his request that we not consider the death penalty issues and asks us to proceed with the full appeal. The Attorney General, in response, asks that we not yet recall the case, but instead asks that we leave the remand in effect for a factual determination by the trial court of appellant's competency, for the reason that the "development of such a record will best protect the interests of the appellant and the State in future proceedings." The response has merit. Thus, we leave the remand in effect and will proceed with the appeal when the trial court certifies its findings to us.

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