

Darrel HILL *v.* STATE of Arkansas

CR 96-33

917 S.W.2d 537

Supreme Court of Arkansas
Opinion delivered March 18, 1996

1. **CRIMINAL PROCEDURE — DEATH PENALTY — MOTION TO LIMIT APPEAL — REMANDED FOR FINDINGS BY TRIAL COURT.** — Where appellant, who had been convicted of capital-felony murder and attempted capital murder and, after his original death sentence had been vacated, was again sentenced to death upon retrial, filed a *pro se* “Motion to Stop Appeal Process,” and where counsel for appellant filed a motion requesting that a mental evaluation be ordered

to determine whether he is capable of making a voluntary and knowing waiver of his right to appeal, the supreme court remanded the matter for findings by the trial court on whether appellant had been advised by counsel with respect to abandoning his appeal and whether appellant will submit himself to a judicial review to be held in the trial court to consider whether he fully appreciates his position and can make a rational choice with respect to pursuing or abandoning issues on appeal concerning the sentence of death.

2. **CRIMINAL PROCEDURE — DEATH PENALTY — WHEN ABANDONMENT OF APPEAL OF DEATH SENTENCE PERMITTED.** — An appellant sentenced to death will be permitted to abandon a state appeal of a death sentence only if he has been judicially determined to have the capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation of the death sentence; that is, he must be determined to have the capacity to understand the choice of life or death and to knowingly and intelligently waive any and all rights to appeal the death sentence.
3. **CRIMINAL PROCEDURE — DEATH PENALTY — MANDATORY REVIEW OF COMPETENCY HEARING.** — If a competency hearing is held, and the trial court determines appellant has made a knowing and intelligent waiver of death-sentence issues, the record of the hearing and the court's findings shall be returned to the supreme court, which will review the proceeding to determine whether appellant had the capacity to understand the choice between life and death and to knowingly and intelligently waive his rights to challenge the sentence of death on appeal.

Pro Se Motion to Limit Appeal; remanded.

Appellant, *pro se*.

No response.

PER CURIAM. Appellant Darrel Hill was convicted of capital felony murder and attempted capital murder. His original death sentence was vacated; however, upon retrial, he was again sentenced to death. Hill filed a notice of appeal from the resentencing, and the record has been lodged with this Court. On February 27, 1996, Hill filed a *pro se* "Motion to Stop Appeal Process." The motion provided that Hill wanted "all appeals in my case to be stopped." On March 1, 1996, counsel for the appellant filed a motion requesting that a mental evaluation be ordered to determine whether Hill is capable of making a volun-

tary and knowing waiver of his right to appeal. Counsel for appellant also moved to stay the briefing time for Hill's appeal.

[1] We remand the matter for findings by the trial court on the questions of whether Hill has been advised by counsel with respect to abandoning his appeal and whether Hill will submit himself to a judicial review to be held in the trial court to consider whether he fully appreciates his position and can make a rational choice with respect to pursuing or abandoning issues on appeal concerning the sentence of death. *Echols v. State*, 321 Ark. 497, 902 S.W.2d 781 (1995).

[2] As in *Echols*, if the trial court determines that Hill has reached his decision with benefit of counsel and will submit himself to a judicial review of his capacity to abandon the appeal of his death sentence, the trial court is directed to hold a competency hearing. An appellant sentenced to death will be permitted to abandon a state appeal of a death sentence only if he has been judicially determined to have the capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation of the death sentence; that is, he must be determined to have the capacity to understand the choice of life or death and to knowingly and intelligently waive any and all rights to appeal the death sentence. See *Echols v. State, supra*.

[3] If a competency hearing is held and the trial court determines Hill has made a knowing and intelligent waiver of the issues pertaining to the death sentence, the record of the hearing and the court's findings shall be returned to this Court for review. We will review the proceeding to determine whether Hill had the capacity to understand the choice between life and death and to knowingly and intelligently waive his rights to challenge the sentence of death on appeal. See *Echols v. State, supra*.

The motion to stay briefing time is granted.

Remanded.