

Stacy TUBBS *v.* STATE of Arkansas

CR. 06-945

242 S.W.3d 264

Supreme Court of Arkansas  
Opinion delivered November 2, 2006

1. APPELLATE PROCEDURE — CRIMINAL — MOTION TO SUBSTITUTE COUNSEL — MOTION TO WITHDRAW NOT YET FILED. — Where appellant filed a motion to substitute privately retained counsel, but his court-appointed attorney had not yet filed a motion to withdraw, the supreme court denied the motion without prejudice to it being filed.
2. APPELLATE PROCEDURE — CRIMINAL — CONCERN IN *BREWER* CASES ADDRESSED. — In the present case, just as in *Brewer v. State*, 66 Ark. App. 324, 992 S.W.2d 140 (1999), and *Brewer v. State*, 64 Ark. App. 372, 984 S.W.2d 65 (1998), the supreme court expressed concern with appellant's recent ability to obtain private counsel after his use of a court-appointed attorney and State funds to obtain his transcript for appeal.

Motion to Substitute Counsel; denied without prejudice.

*James Bennett*, for appellant.

No response.

**P**ER CURIAM. Appellant Stacy Tubbs has filed a motion to substitute privately retained counsel, James Bennett, in place of his court-appointed attorney, Robert Jeffrey, to represent him in his appeal pending before this court.

[1] In the present case, the motion to substitute counsel was filed by Bennett. Jeffrey has heretofore not filed a motion to withdraw, as required by Rule 16 of the Arkansas Rules of

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Appellate Procedure – Criminal, stating reasons for the attempted withdrawal. Moreover, he has continued to act, both prior to and subsequent to the present motion, on Appellant’s behalf. Thus, we deny the motion without prejudice to it being refiled.

[2] Furthermore, we take this opportunity to note that this motion falls within an area of concern addressed by the court of appeals in *Brewer v. State*, 66 Ark. App. 324, 992 S.W.2d 140 (1999), and *Brewer v. State*, 64 Ark. App. 372, 984 S.W.2d 65 (1998). Both of these cases discussed a perceived abuse in the process of obtaining appeal transcripts on the part of indigent defendants who were represented by court-appointed counsel and were, therefore, permitted to obtain trial transcripts at the expense of the State and, thereafter, employed privately retained counsel to represent them on appeal. In the present case, just as in the *Brewer* cases, we are concerned with Appellant’s recent ability to obtain private counsel after his use of a court-appointed attorney and State funds to obtain his transcript for appeal.

Denied without prejudice.

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