

James WHITE *v.* STATE of Arkansas

CR 06-1187

242 S.W.3d 222

Supreme Court of Arkansas
Opinion delivered November 2, 2006

ATTORNEY & CLIENT — MOTION TO WITHDRAW AS ATTORNEY —
GRANTED. — Because appellant's attorney is a full-time, state-salaried
public defender who is provided with a full-time, state-funded
secretary, the supreme court granted his motion to withdraw as
attorney for appellant.

Motion to be Relieved as Attorney for Appellant, granted.

Fernando Padilla, for appellant.

No response.

PER CURIAM. Fernando Padilla, a full-time, state-salaried public defender in Pulaski County, the Sixth Judicial District, was appointed to represent appellant, James White, an indigent defendant. Following a jury trial held on July 18, 2006, appellant was found guilty of rape, knowingly/willfully exposing another to HIV, and sexual abuse in the fourth degree, and he received a life sentence in the Arkansas Department of Correction. A notice of appeal was timely filed and the record has been timely lodged in this court. Mr. Padilla now asks to be relieved as counsel for appellant's appeal based upon *Rushing v. State*, 340 Ark. 84, 8 S.W.3d 489 (2000) (holding that full-time state-salaried public defenders were ineligible for compensation for their work on appeal) and Ark. Code Ann. § 16-87-201 et seq. (1998).

In his motion, Mr. Padilla incorrectly relies on *Rushing* stating that full-time public defenders cannot be compensated for appellate work. Further, he incorrectly states that full-time public defenders are only compensated for trial work. Since the court's decision in *Rushing*, the General Assembly passed legislation providing that only those full-time, state-salaried public defenders who do not have a state-funded secretary may seek compensation for their work on appeal. See Ark. Code Ann. § 19-4-1604(b)(2)(B) (Supp. 2005). Full-time public defenders who do not retain a state-funded secretary will be compensated for their work on appeal. *Tice v. State*, 365 Ark. 410, 230 S.W.3d 557 (2006).

[1] Mr. Padilla states in his motion that he is provided with a full-time, state-funded secretary who maintains his office operations. Accordingly, we grant his motion to withdraw as attorney for appellant. Mr. Joseph C. Self has stated his willingness to accept appointment in this case and he will be substituted as counsel for appellant. The Clerk will establish a new briefing schedule.

GLAZE, J., not participating.