

Loretta L. SANDERS *v.* STATE of Arkansas

CR 07-314

255 S.W.3d 444

Supreme Court of Arkansas
Opinion delivered April 12, 2007

APPEAL & ERROR — MOTION FOR RULE ON CLERK GRANTED — MOTION TO BE RELIEVED AS COUNSEL GRANTED. — Because appellant's court-appointed attorney was not eligible for compensation on appeal, his motion to be relieved as counsel was granted; petitioner's motion for rule on clerk was granted because the State's attorney stated in open court that the State had no objection to the motion for extension of time.

Motion for Rule on Clerk and Motion to Be Relieved as Counsel; motions granted.

Cash Haaser, for appellant.

No response.

PER CURIAM. In 2004, Loretta L. Sanders entered a plea of guilty to possession of a controlled substance and breaking or entering. Imposition of a sixty-month term of imprisonment for each offense was suspended. A fine of \$500 was imposed and petitioner was ordered to make restitution. In 2006, probation was revoked, and petitioner was sentenced to an aggregate term of 108 months' imprisonment. She appeals the revocation of her probation.

The trial court appointed Cash Haaser, who is a full-time, state-salaried public defender with a full-time, state funded secretary, to represent petitioner. Haaser filed a timely notice of appeal and tendered the record on appeal. The supreme court clerk refused to file the record because the circuit court's order extending time to file the record did not comply with Rule 5(b)(1)(C) of the Arkansas Rules of Appellate Procedure. Mr. Haaser now seeks to lodge the record and to be relieved as counsel.

[1] In *Rushing v. State*, 340 Ark. 84, 8 S.W.3d 489 (2000), we held that full-time, state-salaried public defenders are ineligible for compensation for their work on appeal. Since *Rushing*, the General Assembly passed Ark.Code Ann. § 19-4-1604(b)(2)(B) (Supp.2005), which states:

A person employed as [a] full-time public defender who is not provided a state-funded secretary may also seek compensation for appellate work from the Supreme Court or the Court of Appeals.

Because Haaser is not eligible for compensation on appeal, his motion to be relieved as counsel is granted. *Navarro v. State*, 367 Ark. 190, 238 S.W.3d 610 (2006); *Mejia v. State*, 366 Ark. 348, 235 S.W.3d 519 (2006). We also grant petitioner's motion for rule on clerk and direct that the record be lodged because the State's attorney stated in open court on December 20, 2006, that the State had no objection to the motion for extension of time. Attorney Scott A. Strain is appointed to represent petitioner on appeal. As the record on appeal has been lodged, our clerk will set a new briefing schedule for the appeal.

Motions granted.
