

Robert L. WANN *v.* STATE of Arkansas

CR 06-1423

255 S.W.3d 473

Supreme Court of Arkansas  
Opinion delivered April 12, 2007

APPEAL & ERROR — MOTION TO FILE BELATED APPEAL GRANTED —  
MOTION TO BE RELIEVED AS COUNSEL GRANTED. — Because appel-  
lant's attorney candidly admitted fault for failing to perfect appellant's  
appeal, and because his motion stated that he was provided with a  
full-time state-funded secretary, the supreme court granted both his  
motion to file belated appeal and his motion to be relieved as counsel.

Motion to File a Belated Return; Motion for Belated  
Appeal; Motion to Withdraw as Counsel; granted.

*John Joplin*, for appellant.

No response.

**P**ER CURIAM. The Public Defender of the 12th Judicial  
District was appointed to represent Robert L. Wann on a  
petition to revoke a suspended imposition of sentence. The circuit  
court concluded that Wann violated the terms and conditions of his  
suspended sentence, and he was sentenced to three years in the  
Arkansas Department of Corrections with an additional suspended  
imposition of sentence of three years. The circuit court entered a  
judgment and commitment order on April 24, 2006. On January 11,  
2007, we remanded this case, directing the circuit court to settle the  
record as to whether Wann advised his trial counsel, Mr. John Joplin  
and Ms. Rita Howard, that he wished to appeal within 30 days from  
the date the judgment was entered. *See Ark. R. App. P. – Crim. 2(e)*  
(2006).

The circuit court was untimely in tendering the findings due  
to inclement weather on the date of the scheduled hearing, January  
31, 2007. The circuit court rescheduled the hearing and conducted  
it on February 16, 2007. The circuit court, thereafter, entered an  
order, almost a month later, on March 15, 2007, finding that Wann  
requested that his counsel file an appeal within 30 days. Wann now  
asks that we grant a belated return of the circuit court's finding.  
We grant Wann's motion to file the belated return and grant his  
request for a belated appeal.

Relief from the failure to perfect an appeal is provided as part of the appellate procedure granting the right to an appeal. *McDonald v. State*, 356 Ark. 106, 146 S.W.3d 883 (2004). Under Ark. R. App. P. – Crim. 16(a), once an attorney represents a defendant, the attorney is obligated to continue representing the defendant until relieved by the appropriate court. See *Hammon v. State*, 347 Ark. 267, 65 S.W.3d 853 (2002). There is no indication that Mr. Joplin or Ms. Howard was relieved by the trial court. Thus, Mr. Joplin was obligated to perfect the appeal and lodge the record in the appellate court. Under no circumstance may an attorney who had not been relieved by the court abandon the appeal. See *Roger v. State*, 353 Ark. 359, 107 S.W.3d 166 (2003) (*per curiam*).

In this case, Mr. Joplin admits responsibility for failing to perfect Wann’s appeal, and he subsequently seeks to withdraw. This court clarified its treatment of motions for rule on the clerk and motions for belated appeals in *McDonald v. State*, 356 Ark. 106, 146 S.W.3d 883 (2004). There we said that there are only two possible reasons for an appeal not being timely perfected: either the party or attorney filing the appeal is at fault, or there is “good reason.” *McDonald v. State*, 356 Ark. at 116, 146 S.W.3d at 891. We explained:

Where an appeal is not timely perfected, either the party or attorney filing the appeal is at fault, or there is good reason that the appeal was not timely perfected. The party or attorney filing the appeal is therefore faced with two options. First, where the party or attorney filing the appeal is at fault, fault should be admitted by affidavit filed with the motion or in the motion itself. There is no advantage in declining to admit fault where fault exists. Second, where the party or attorney believes that there is good reason the appeal was not perfected, the case for good reason can be made in the motion, and this court will decide whether good reason is present.

*Id.*, 146 S.W.3d at 891 (footnote omitted). While this court no longer requires an affidavit admitting fault before we will consider the motion, an attorney should candidly admit fault where he has erred and is responsible for the failure to perfect the appeal. See *id.*

[1] In accordance with *McDonald v. State*, *supra*, Mr. Joplin has candidly admitted fault. The motion is, therefore, granted. A copy of this opinion will be forwarded to the Committee on Professional Conduct.

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Mr. Joplin, a full-time, state-salaried public defender, now asks to be relieved as counsel for appellant in this criminal appeal, based upon the case of *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).

Since the court's decision in *Rushing*, the law was changed by the General Assembly. Act 1370 of 2001 provides in part: "[P]ersons employed as full-time public defenders, who are not provided a state-funded secretary, may also seek compensation for appellate work from the Arkansas Supreme Court or the Arkansas Court of Appeals." That provision is now codified as Ark. Code Ann. § 19-4-1604(b)(2)(B) (Supp. 2001).

Mr. Joplin's motion states that he is provided with a full-time, state-funded secretary. Accordingly, we grant his motion to withdraw as attorney. Mr. David L. Dunagin will be substituted as attorney for Wann in this matter. We grant Mr. Dunagin 35 days from this opinion to file his abstract and brief.

Motions granted.

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