

Shelton WORMLEY *v.* STATE of Arkansas

CR 08-1344

289 S.W.3d 463

Supreme Court of Arkansas
Opinion delivered December 11, 2008

APPEAL & ERROR — MOTION FOR RULE ON CLERK WAS NOT CONSIDERED — NEW COUNSEL WAS NEVER PROPERLY APPOINTED. — The supreme court was unable to consider appellant's motion for rule on clerk where one attorney filed appellant's notice of appeal, but a different attorney — substituted by the trial court — filed the motion for rule on clerk; under Arkansas Rule of Appellate Procedure —Criminal 16(a), once notice of appeal has been filed, the appellate court shall have exclusive jurisdiction to relieve counsel and appoint new counsel.

¹ We note that it was Mr. Whiteside's responsibility, as the appellant, to abstract the summary-judgment hearing. See Ark. Sup. Ct. R. 4-2(a)(5). While the appellees did provide a supplemental abstract, we offer no opinion on the sufficiency of that abstract.

Motion for Rule on Clerk; denied.

Donald E. Warren, Sr., for appellant.

No response.

PER CURIAM. Shelton Wormley, by counsel, John L. Kearney, has filed this motion for rule on clerk. The circuit court's judgment and commitment order was entered on May 29, 2008, and the attorney for Wormley, Donald E. Warren, Sr., filed a notice of appeal on June 12, 2008. The trial court granted a motion filed by Mr. Warren to substitute John L. Kearney as counsel for appellant on July 16, 2008. The record in this matter was due to be filed by September 11, 2008. Because the record was not tendered to this court until November 17, 2008, it is untimely.

[1] We are unable to consider the motion for rule on clerk filed by Mr. Kearney at this time. Under Arkansas Rule of Appellate Procedure—Criminal 16(a), once the notice of appeal has been filed, the appellate court shall have exclusive jurisdiction to relieve counsel and appoint new counsel. Thus, because Mr. Warren filed the notice of appeal on June 12, 2008, the trial court lacked jurisdiction to relieve him and substitute Mr. Kearney as counsel for appellant. Consequently, because Mr. Kearney was never properly appointed as counsel, he does not represent appellant, and this court will not consider a motion for rule on clerk filed by him.

Because Mr. Warren has not been relieved as counsel of record, we direct him to file a motion for rule on clerk on Wormley's behalf within thirty days. At that time, Mr. Warren may file a motion to withdraw as counsel, and Mr. Kearney, should he wish to represent Wormley on appeal, may file a motion with this court for appointment of counsel.

Motion for rule on clerk denied.