

Earnest Lee WADE v. STATE of Arkansas

CR 79-19

702 S.W.2d 28

Supreme Court of Arkansas
Opinion delivered January 21, 1986

1. APPEAL & ERROR — MOTION FOR PERMISSION TO FILE PRO SE SUPPLEMENTAL BRIEF ON APPEAL — MOTION PREMATURE. — Petitioner's motion for permission to file a pro se supplemental brief on appeal is premature since, not having read his attorney's brief, he cannot say that it is deficient; however, if, after reading the brief, he finds it inadequate, he may file a second motion to supplement.
2. CONSTITUTIONAL LAW — RIGHT TO COUNSEL WHEN CHARGED WITH SERIOUS CRIMINAL OFFENSE — COUNSEL APPOINTED FOR INDIGENT. — Where a person is charged with a serious criminal offense, counsel will be provided, both at trial and on appeal, if counsel is not obtainable because of indigence.
3. ATTORNEY & CLIENT — PRESUMPTION THAT COUNSEL IS COMPETENT. — Counsel is presumed to be competent.
4. APPEAL & ERROR — INDIVIDUALS ALLOWED TO REPRESENT THEMSELVES ON APPEAL — NO SPECIAL CONSIDERATION GIVEN. — Under the proper circumstances, the Supreme Court will allow individuals to represent themselves, but they receive no special consideration of their arguments.

Motion for Permission to File a *Pro Se* Supplemental Brief on Appeal; motion denied.

Petitioner, *pro se*.

Steve Clark, Att'y Gen., by: Theodore Holder, Asst. Att'y Gen., for respondent.

PER CURIAM. Earnest Lee Wade was convicted of second degree escape and sentenced to ten years imprisonment and a \$10,000 fine in Lincoln County Circuit Court. He was declared a pauper which entitles him to a record at state expense, and Betty Dickey was appointed to represent him on appeal. She has not yet filed a brief in his behalf. Wade asks that he be allowed to file a supplemental *pro se* brief, agreeing to fully comply with our rules on the form of such briefs.

[1] Wade's motion is premature. Since he has not read his attorney's brief, he cannot say that it is deficient. If after reading the brief, Wade finds it inadequate, he may file a second motion to supplement. He should be aware, however, that unless he can clearly show that counsel's brief is lacking, he will not be permitted to file a supplemental brief.

[2, 3] There has to be an orderly procedure and consistent rules governing all legal petitions for relief, whether it be by a member of the bar, litigants representing themselves, or an inmate of a penal institution. In our judgment counsel is necessary to effectively represent a person charged with a serious criminal offense. If counsel is not obtainable because of indigence, it will be provided, both at trial and on appeal. Counsel is presumed competent. *Watson v. State*, 282 Ark. 246, 667 S.W.2d 953 (1984). That does not mean that counsel will argue every conceivable issue in a case or should present frivolous issues. It is a matter of good judgment how to present an appeal and legal counsel is best able to do that. *Jones v. Barnes*, 463 U.S. 745 (1983).

[4] Under the proper circumstances we will allow individuals to represent themselves, but they receive no special consideration of their arguments. See *Green v. State*, 277 Ark. 129, 639 S.W.2d 511 (1982).

Motion denied.

PURTLE, J., not participating.