

## Willie Earl CAMPBELL v. STATE of Arkansas

CR 85-172

705 S.W.2d 422

Supreme Court of Arkansas  
Opinion delivered March 3, 1986

1. **APPEAL & ERROR — CONCLUSION BY APPELLANT'S ATTORNEY THAT APPEAL IS MERITLESS — MOTION TO WITHDRAW — REQUIREMENTS.** — When an attorney concludes that an appeal of an appellant's conviction is meritless and wishes to withdraw as counsel, his request to withdraw must be accompanied by a brief referring to anything in the record that might arguably support the appeal, together with a list of all objections made by the appellant and overruled by the court and of all motions and requests made by the appellant and denied by the court, accompanied by a statement as to the reason counsel considers that the points thus raised would not arguably support the appeal. [Rule 11(h), Rules of the Arkansas Supreme Court and Court of Appeals.]
2. **APPEAL & ERROR — DENIAL OF COUNSEL'S MOTION TO WITHDRAW — BRIEF NOT IN COMPLIANCE WITH APPLICABLE RULE.** — Where

counsel, seeking permission to withdraw as attorney for appellant on grounds that the appeal is wholly without merit, fails to comply with Rule 11(h), Rules of the Arkansas Supreme Court and Court of Appeals, *held*, his motion to be relieved as counsel is denied and appellant is instructed to submit a brief in compliance with the rule within thirty days, after which the Attorney General shall file a brief in response, if necessary.

Appeal from Jefferson Circuit Court; *H. A. Taylor*, Judge; Motion to be Relieved as Counsel; motion denied.

*Cross, Kearney & McKissic*, by: *Gene E. McKissic*, for appellant.

*Steve Clark*, Att'y Gen., by: *Joel O. Huggins*, Asst. Att'y Gen., for appellee.

PER CURIAM. Appellant Willie Earl Campbell was found guilty by a jury of burglary, possession of a prohibited weapon, terroristic threatening and the offense of felon in possession of a firearm. He was sentenced as a habitual offender with four prior felony convictions to consecutive sentences totaling 62 years imprisonment.

[1] Appellant's trial attorney Gene McKissic has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), stating there is no merit to an appeal of appellant's convictions and asking to be relieved as counsel. When an attorney concludes that an appeal is meritless, he is required to comply with our Rule 11(h) which provides in pertinent part:

A request to withdraw on grounds that the appeal is wholly without merit shall be accompanied by a brief referring to anything in the record that might arguably support the appeal, together with a list of all objections made by the appellant and overruled by the court and of all motions and requests made by the appellant and denied by the court, accompanied by a statement as to the reason counsel considers that the points thus raised would not arguably support the appeal.

Counsel has not complied with the rule. Appellant has submitted a brief, but it does not contain a list of all objections, motions and requests made by appellant and denied by the court or a statement as to the reason the points would not arguably support

an appeal. The argument portion of the brief is in fact five sentences long and ignores the issues raised in the trial court and the question of the sufficiency of the evidence to support the four convictions.

It is also disturbing that the Attorney General concurs that the appellant has abstracted all objections, motions and requests denied by the court and concludes that the appellant has discussed the points "sufficiently" to apprise this Court of the lack of merit when in truth the appellant has not done so.

[2] As appellant has failed to comply with Rule 11(h), he is instructed to submit a brief in compliance with the rule within thirty days. The Attorney General shall then file a brief in response if necessary.

Motion to be relieved as counsel denied.

PURTLE, J., not participating.

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