

Darnell BURKS *v.* STATE of Arkansas

CR. 97-468

945 S.W.2d 367

Supreme Court of Arkansas
Opinion delivered May 27, 1997

1. APPEAL & ERROR — COUNSEL CHARGED WITH KNOWLEDGE OF WHEN FINAL ORDER IS ENTERED AND IS RESPONSIBLE FOR FILING TIMELY NOTICE OF APPEAL. — Counsel is charged with knowledge of when a final order is entered in a case and is responsible for filing a timely notice of appeal from the final judgment.
2. APPEAL & ERROR — FAILURE OF COUNSEL TO PERFECT APPEAL IN CRIMINAL CASE — GOOD CAUSE FOR GRANTING BELATED APPEAL. — The failure of counsel to perfect an appeal in a criminal case where the defendant desires an appeal constitutes a denial of effective assistance of counsel and is good cause for granting a belated appeal.

Motion for Belated Appeal; granted.

Deborah R. Sallings, Deputy Public Defender, for appellant.

No response.

PER CURIAM. Darnell Burks, by his attorney Deborah R. Sallings, Deputy Public Defender for the Sixth Judicial District, has filed a motion for belated appeal.

On October 2, 1996, Burks was sentenced to twenty years' imprisonment on a petition to revoke probation. Mr. Ed Webb represented Burks at the revocation and sentencing hearings. On October 24, 1996, Burks filed a *pro se* motion for appeal. The record does not reflect that Mr. Webb was served with a copy of

the motion. However, on November 1, 1996, Mr. Webb filed a notice of appeal from the revocation. On November 22, 1996, Burks filed a second *pro se* notice of appeal. Once again, the record does not reflect that Mr. Webb was served with a copy of this notice. On November 27, 1996, an amended judgment and commitment order was filed, although no earlier judgment appears in the record.

No notice of appeal was filed by Burks or his attorney, Mr. Webb, within thirty days of the amended judgment and commitment order. On January 24, 1997, the trial court relieved Mr. Webb as counsel and appointed the public defender to represent Burks. Shortly thereafter, on January 30, 1997, the public defender filed a notice of appeal on behalf of Burks.

The record reflects that Burks desired an appeal from the revocation of his probation. The record further reflects that his attorney, Mr. Webb, was aware of his desire to appeal, having filed a notice of appeal on November 1, 1996. However, Mr. Webb did not file a notice of appeal from the amended judgment.

[1, 2] Counsel is charged with knowledge of when a final order is entered in a case, and is responsible for filing a timely notice of appeal from the final judgment. *Higgins v. State*, 326 Ark. 1030, 936 S.W.2d 740 (1996). The failure of counsel to perfect an appeal in a criminal case where the defendant desires an appeal constitutes a denial of effective assistance of counsel and is good cause for granting a belated appeal. *Blakely v. State*, 279 Ark. 141, 649 S.W.2d 187 (1983); *Surridge v. State*, 276 Ark. 596, 637 S.W.2d 597 (1982). As Mr. Webb failed to properly perfect the appeal, the motion for belated appeal is hereby granted. Deborah R. Sallings, Deputy Public Defender for the Sixth Judicial District, is appointed to represent Burks in this appeal and the record tendered on April 28, 1997, shall be lodged by the Clerk of the Supreme Court.

A copy of this opinion will be forwarded to the Committee on Professional Conduct.