

Freddie Davis MATTHEWS *v.* STATE of Arkansas

CR 98-436

970 S.W.2d 266

Supreme Court of Arkansas  
Opinion delivered June 11, 1998

1. APPEAL & ERROR — WITHDRAWAL OF COUNSEL — APPELLATE RULE APPLIES TO APPEALS OF DENIAL OF POSTCONVICTION RELIEF. — Rule 16 of the Arkansas Rules of Appellate Procedure—Criminal, which provides that trial counsel shall continue to represent a convicted defendant throughout any appeal unless permitted by the trial court or the supreme court to withdraw in the interest of justice or for other sufficient cause, applies to appeals of orders denying postconviction relief.
2. APPEAL & ERROR — WITHDRAWAL OF COUNSEL — ONLY APPELLATE COURT MAY RELIEVE COUNSEL AFTER NOTICE OF APPEAL. — Once a notice of appeal is filed with the circuit clerk, only the

appellate court may relieve counsel of the obligation to proceed with the appeal.

3. **APPEAL & ERROR — WITHDRAWAL OF COUNSEL — MOTION DENIED.** — Where, after notice of appeal had been filed, appellant's attorney requested permission to withdraw due to a conflict arising from another scheduled trial, the supreme court did not find sufficient cause to relieve him of his responsibility; the court denied the motion for leave to withdraw appearance as counsel.

Motion for Leave to Withdraw Appearance as Counsel; denied.

*Rick Woods*, for appellant.

No response.

**PER CURIAM.** Appellant Freddie Davis Matthews was convicted of a Class-Y felony. Appellant filed in the trial court a petition for postconviction relief pursuant to Ark. R. Crim. P. 37. On February 9, 1998, the trial court denied appellant's petition. Appellant filed a notice of appeal and designation of record on February 24, preserving his right to appeal the denial of his petition. Also on February 24, appellant's counsel, Rick Woods, filed a motion for leave to withdraw appearance as counsel, which the trial court granted on March 3. Mr. Woods forwarded to appellant a notice of filing of appeal and the transcript from the Rule 37 hearing on April 20.

Now Mr. Woods has filed in this court a motion for leave to withdraw appearance as counsel on behalf of his client in order to relieve him from representation due to the fact that Mr. Woods has a jury trial on June 1 and 2 that prevent him from adequately representing appellant in this appeal. We find this reason insufficient cause for granting this motion to withdraw as counsel.

[1, 2] Rule 16 of our Criminal Rules of Appellate Procedure provides as follows:

Trial counsel, whether retained or court appointed, shall continue to represent a convicted defendant throughout any appeal to the Arkansas Supreme Court, unless permitted by the trial court or the Arkansas Supreme Court to withdraw in the interest of justice or for other sufficient cause.

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Ark. R. App. P.—Criminal 16 (1998); *see also* Ark. Sup. Ct. R. 4-3(j)(1) (1998); *Jackson v. State*, 325 Ark. 27, 923 S.W.2d 280 (1996). Rule 16 applies to appeals of orders denying post-conviction relief as well. *Sanders v. State*, 329 Ark. 363, 952 S.W.2d 133 (1997). Once a notice of appeal is filed with the circuit clerk, only the appeals court may relieve counsel of the obligation to proceed with the appeal. *Jackson*, 325 at 28, 923 S.W.2d at 281.

[3] Mr. Woods requests permission to withdraw from representing appellant due to a conflict, a jury trial on another client's felony charge that was scheduled for June 1-2, 1998. Mr. Woods contends that his preparation for this trial would render him unable to effectively assist appellant in bringing this appeal. We do not find this sufficient cause to relieve him of his responsibility now that the appeal has been filed.

The present motion for leave to withdraw appearance as counsel is denied. An appropriate briefing schedule shall be set by the clerk of this court.

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