717

Roger Lewis COULTER v. STATE of Arkansas

CR 00-281

13 S.W.3d 171

Supreme Court of Arkansas Opinion delivered March 30, 2000

APPEAL & ERROR — MOTION FOR BELATED APPEAL — GOOD CAUSE FOR GRANTING. — Lack of notice to a defendant that his or her Ark. R. Crim. P. 37 petition has been denied by the circuit court constitutes good cause to permit a belated appeal.

Motion for Belated Appeal and Appointment of Counsel; granted.

Alvin Schay, for appellant.

No response.

PER CURIAM. Appellant, Roger Lewis Coulter, seeks a belated appeal and appointment of counsel for purposes of appealing the trial court's denial of relief under Rule 37. Coulter was convicted of capital murder in the Ashley County Circuit Court and sentenced to death. We affirmed the trial court on his direct appeal. Coulter v. State, 304 Ark. 527, 804 S.W.2d 348 (1991). On December 31, 1996, Coulter petitioned the circuit court for

relief under Ark. R. Crim. P. 37. The circuit court denied his petition, on October 8, 1999.

Appellant's counsel did not receive notice of the trial court's denial until January 25, 2000. Appellant's counsel promptly thereafter filed a notice of appeal and designation of record on January 27, 2000. Apparently, the notice letter had been sent to counsel's former address at the now-defunct Arkansas Capital Resource Center.

[1] We recently held in a case involving a death-row inmate also formerly represented by the Arkansas Capital Resource Center that lack of notice to the defendant constituted good cause to permit a belated appeal. In *Porter v. State*, 339 Ark. 15 (1999), we did so recognizing the fact that modifications to Rule 37.5 should cure the inadequacies of the notice process.

Appellant's motion for belated appeal is therefore granted, and attorney Alvin Schay is hereby appointed as counsel for appellant for purposes of this appeal.