

Roger Dale BARRETT *v.* STATE of Arkansas

CR. 02-584

85 S.W.3d 551

Supreme Court of Arkansas
Opinion delivered September 26, 2002

1. MOTIONS — SUBSTITUTION OF COUNSEL — APPELLANT'S TRIAL ATTORNEY ORDERED TO FILE. — The supreme court ordered appellant's trial counsel to file a motion for substitution of counsel within seven days of the date of the court's order, noting that failure to do so would result in an order to show cause why he should not be held in contempt of court.
2. APPEAL & ERROR — MOTION FOR RULE ON CLERK TO ALLOW ENTRY OF APPEARANCE DENIED — MOTION TO EXTEND BRIEFING SCHEDULE MOOT. — Because a second attorney's motion for rule on clerk to enter an appearance was denied, his motion for an extension of time to file appellant's brief was moot.

Motion for Rule on Clerk to Allow Entry of Appearance denied; Motion to Extend Briefing Schedule moot.

J. Eric Hagler, for appellant.

No response.

PER CURIAM. Attorney J. Eric Hagler moves this court for a rule on clerk to allow his entry of appearance as counsel for appellant Roger Dale Barrett. He shows this court that Barrett was convicted of capital murder and sentenced to life in prison without parole. His trial counsel was John Gross, and Gross filed a notice of appeal on Barrett's behalf.

Eric Hagler was then retained by Barrett to pursue an ineffective-counsel claim under Rule 37 against Gross. However, Hagler concluded that he had to pursue a direct appeal first and tendered a trial transcript to the Supreme Court Clerk on April 18, 2002. The clerk refused to accept it, because Hagler was not the attorney of record.

The Supreme Court Clerk notified Gross that he was still counsel of record and needed to file a motion for rule on clerk so

that the late record could be filed. Gross did that, and the transcript was filed on June 37, 2002. A briefing schedule was then set. Appellant's brief was due on August 6, 2002.

According to his motion, on July 26, 2002, Hagler contacted Gross about having Hagler substituted as attorney of record. Gross advised Hagler that he had filed a motion to substitute counsel on or about August 7, 2002. To date no such motion has been filed by Gross with the Supreme Court Clerk.

[1, 2] Attorney Gross is hereby ordered to file a motion for substitution of counsel within seven days of the date of this order. Failure to do so will result in an order to show cause why he should not be held in contempt of court. Because at this time Hagler's motion for rule on clerk to enter an appearance is denied, his motion for an extension of time to file the appellant's brief is moot.

A copy of this order shall be forwarded to the Supreme Court Committee on Professional Conduct.
