

Raymond WALTERS *v.* STATE of Arkansas

CR 03-1041

125 S.W.3d 818

Supreme Court of Arkansas  
Opinion delivered October 9, 2003

ATTORNEY & CLIENT — MOTION TO WITHDRAW AS ATTORNEY ON DIRECT APPEAL — DENIED. — Where appellant public defender's motion to withdraw did not state whether he was provided a state-funded secretary, the supreme court denied his motion, noting that he would be allowed to resubmit the motion in which he would supply information about whether he was provided a state-funded secretary, in order for the supreme court to determine whether he would qualify for dismissal in light of Ark. Code Ann. § 19-4-1604(b)(2)(B) (Supp. 2001).

Motion to Review Record; granted.

*Mark S. Frasier*, Public Defender, for appellant.

No reponse.

**P**ER CURIAM. Mark S. Frasier, a state-salaried, full-time public defender for the Eighteenth Judicial District East, was appointed by the trial court to represent Appellant, Raymond Walters, an indigent defendant, on the charge of rape, a Class Y Felony. Following a trial, Walters was convicted of the charge and sentenced to life. A notice of appeal was timely filed and the record has been timely lodged in this court.

Mr. Frasier now asks to be relieved as counsel for Appellant in this criminal appeal, based on the case of *Rushing v. State*, 340 Ark. 84, 8 S.W.3d 489 (2000). There, this court determined that state-salaried, full-time public defenders were ineligible for compensation by the court for work performed in the appeal of a matter in which the public defender represented the defendant. Mr. Frasier also relies on the case of *Tester v. State*, 341 Ark. 281, 16 S.W.3d 227 (2000) (per curiam), wherein this court relieved the appellant's court-appointed public defender and appointed new counsel on appeal under similar circumstances.

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Since the time of those decisions, however, the law was changed by the General Assembly. Particularly, Act 1370 of 2001 provided in part: "Persons employed as full-time public defenders who are not provided a state-funded secretary, may also seek compensation for appellate work from the Arkansas Supreme Court or the Arkansas Court of Appeals." That provision is now codified as Ark. Code Ann. § 19-4-1604(b)(2)(B) (Supp. 2001).

[1] Mr. Frasier's motion does not state whether he is provided a state-funded secretary. Accordingly, we must deny his motion at this time. See *Mills v. State*, 347 Ark. 695, 66 S.W.3d 643 (2002) (per curiam). Mr. Frasier may resubmit his motion, providing information about whether he is provided a state-funded secretary, in order for us to determine whether he qualifies for dismissal in light of section 19-4-1604(b)(2)(B).

Motion denied.

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