

Cite as 2018 Ark. 120
SUPREME COURT OF ARKANSAS
No. CR-18-107

CECIL D. BEENE

PETITIONER

V.

STATE OF ARKANSAS

RESPONDENT

Opinion Delivered APRIL 12, 2018

PRO SE MOTION FOR BELATED
APPEAL AND RULE ON CLERK
[PULASKI COUNTY CIRCUIT COURT,
FOURTH DIVISION, NO. 60CR-14-3278]

MOTION TREATED AS MOTION FOR
BELATED APPEAL AND REMANDED.

COURTNEY HUDSON GOODSON, Associate Justice

Petitioner Cecil D. Beene was convicted of sexual assault in the second degree as reflected in a judgment-and-commitment order entered on August 9, 2016. Beene filed on February 6, 2018, a pro se motion for belated appeal and rule on clerk seeking to proceed with a belated appeal of the judgment pursuant to Arkansas Rule of Appellate Procedure–Criminal 2(e) (2017).¹ Specifically, Beene contends that his trial counsel, Hugh Laws, failed to pursue an appeal on his behalf. Because proper disposition of the motion for

¹The motion is treated as a motion for belated appeal under Arkansas Rule of Appellate Procedure–Criminal 2(e), rather than as a motion for rule on clerk, because no notice of appeal was filed. Arkansas Rule of Appellate Procedure–Criminal 2(a) provides that a notice of appeal must be filed within thirty days of the date of entry of the order from which the appeal is taken. Moreover, the application for belated appeal here was filed within eighteen months of the date sentence was pronounced.

belated appeal in this case will require findings of fact, we remand this matter to the trial court for an evidentiary hearing.

Beene contends that he requested an appeal from Laws on the “day [of his] conviction and through [Beene’s] mother”; that Beene had attempted to contact Laws numerous times to “get an update [] to no avail”; and that Beene’s mother had requested transcripts to assist in perfecting the appeal and was told that she could not afford them. Beene further alleges that he learned that no notice of appeal had been filed and no appeal perfected, which was “expressly contrary to his desire.”²

When a pro se motion for belated appeal is filed in which the petitioner contends that he made a timely request to appeal and the record does not contain an order relieving trial counsel, it is the practice of this court to request an affidavit from the trial attorney in response to the allegations in the motion. There is no order relieving Laws in the record filed in this case.³ The affidavit requested of trial counsel is required because Arkansas Rule of Appellate Procedure–Criminal 16 (2017) provides in pertinent part that trial counsel, whether retained or court appointed, shall continue to represent a convicted defendant throughout any appeal, unless permitted by the trial court or the appellate court to withdraw in the interest of justice or for other sufficient cause. A defendant may waive his right to appeal by his failure to inform counsel of his or her desire to appeal within the

²Beene makes no specific claim as to when he learned that no appeal was perfected.

³The record filed in this case is a partial record and contains only the sentencing order.

thirty-day period allowed for filing a notice of appeal under Arkansas Rule of Appellate Procedure–Criminal 2(a). *See generally McDonald v. State*, 356 Ark. 106, 146 S.W.3d 883 (2004).

In his affidavit, Laws avers that immediately after the trial on August 3, 2016, he met with Beene and Beene’s family and informed them that that there was a thirty-day period from the entry of the judgment for the filing of a notice of appeal. Laws contends that he consulted with Beene about the advantages and disadvantages of an appeal and made an effort to determine whether Beene wanted to appeal. Laws further contends that Beene and Beene’s sister, Trisha Bailey, informed him that Beene did not want to pursue an appeal and that neither Beene nor any of his family has indicated any change in Beene’s mind as to his desire to seek an appeal from that time. Laws claims that the filing of the pro se motion for belated appeal was the first indication that he had that Beene had desired an appeal in the matter.

Beene’s and Laws’s claims pertaining to whether Beene communicated his desire to appeal to Laws within the time to file a timely notice of appeal are in direct conflict. Because proper disposition of the motion for belated appeal in this case requires findings of fact, which must be made in the trial court, we remand this matter to the trial court for an evidentiary hearing on the issue of whether counsel was informed by petitioner within the time period allowed for filing a notice of appeal that petitioner desired to appeal. The trial court is directed to enter “Findings of Fact and Conclusions of Law” within ninety

days and submit those findings and conclusions to this court with the transcript of the evidentiary hearing.

Motion treated as motion for belated appeal and remanded.