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SUPREME COURT OF ARKANSAS

No. CR-18-899

JUSTIN R. SIMPSON

PETITIONER

V.

STATE OF ARKANSAS

RESPONDENT

Opinion Delivered: May 2, 2019

PRO SE MOTION AND
AMENDED MOTION FOR
BELATED APPEAL

[POLK COUNTY CIRCUIT
COURT, NO. 57CR-18-47]

REMANDED FOR FINDINGS OF
FACT.

ROBIN F. WYNNE, Associate Justice

Petitioner Justin R. Simpson requests that this court allow him to proceed with a belated appeal of a judgment reflecting his conviction on charges of fleeing and endangering the welfare of a minor and the imposition of an aggregate sentence of 120 months' imprisonment in the Arkansas Department of Correction. Because findings of fact must be made concerning Simpson's claims, we remand to the circuit court for those findings.

The partial record submitted with Simpson's pro se petition for belated appeal reflects that the judgment at issue was entered on April 13, 2018, and it does not contain a notice of appeal. Simpson filed his initial pro se petition for belated appeal, and the attorney Simpson named and alleged had performed deficiently responded that he had not represented Simpson in the proceedings. Simpson filed an amended petition in which he alleged that he should be permitted to bring a belated appeal because Brandon Crawford,

the attorney who did represent Simpson in the matter, failed to advise him of his right to appeal.

In accord with the practice of this court in circumstances such as this when the record does not contain an order relieving the trial attorney, Crawford was asked to provide an affidavit in response to Simpson's allegations. Arkansas Rule of Appellate Procedure—Criminal 16 (2018) 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. However, a defendant may waive his right to appeal by his failure to inform counsel of his or her desire to appeal within the thirty-day period allowed for filing a notice of appeal under Arkansas Rule of Appellate Procedure—Criminal 2(a). *Beene v. State*, 2018 Ark. 120.

In his affidavit, Crawford disputes Simpson's allegation that he was not advised of his right to appeal the conviction. Instead, Crawford contends that he advised Simpson of his right to appeal and that Simpson decided not to pursue an appeal. Crawford also contends that Simpson entered a guilty plea, waiving his right to appeal the conviction, and that he was advised of his right to appeal the jury determination on sentencing. We note that this last claim conflicts with a notation in the sentencing order contained in the partial record before us that Simpson was found guilty at a jury trial and sentenced by the jury.

Where, as here, counsel has provided the required affidavit and the claims in the affidavit conflict with those in the motion for belated appeal, proper disposition of the motion requires findings of fact to be made in the trial court. *Id.* Accordingly, we remand

the matter to the trial court for an evidentiary hearing on the issue of whether Crawford advised Simpson of his right to appeal and whether Crawford was informed by Simpson within the time period allowed for filing a notice of appeal that Simpson desired to appeal his conviction. In addition, if the trial court determines, as Crawford contends, that the judgment in the record does not accurately reflect the disposition of the matter and there is an amended judgment that does so, the supplemental record should include any such amended judgment as well as the transcript of the evidentiary hearing. The trial court is to enter its findings of fact and conclusions of law as directed and submit those findings and conclusions along with the supplemental record within ninety days.

Remanded for findings of fact.