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SUPREME COURT OF ARKANSAS

No. CR 10-331

COREY BROWN
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered May 20, 2010

PRO SE MOTION FOR BELATED
APPEAL [CIRCUIT COURT OF
PULASKI COUNTY, CR 2007-4642,
HON. HERBERT WRIGHT, JUDGE]

MOTION DENIED.

PER CURIAM

On December 9, 2008, petitioner was found guilty by a jury of two counts of aggravated robbery and one count of battery in the first degree. The judgment was entered December 23, 2008. An amended judgment was entered on January 13, 2009, reflecting that petitioner had been found guilty of the three offenses and that an aggregate sentence of 600 months' imprisonment had been imposed. No appeal was taken, and petitioner now seeks by pro se motion to proceed with a belated appeal pursuant to Arkansas Rule of Appellate Procedure—Criminal 2(e) (2009), which permits a belated appeal in a criminal case in some instances.

Petitioner states that he did not waive his right to proceed with a direct appeal of the judgment and that his retained attorney, John M. May, did not file a notice of appeal. He does not state specifically that he requested that Mr. May proceed with an appeal from the judgment, but, instead, argues that counsel was required to perfect an appeal in his case.

When a pro se motion for belated appeal is filed in which the petitioner contends that he was entitled to an 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 Mr. May in the record filed in this case. Mr. May responded by affidavit to the motion and avers that he explained the appeal process to petitioner but was never asked to perfect an appeal.

Arkansas Rule of Appellate Procedure—Criminal 16 (2009) 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. We have held, however, that a defendant may waive his right to appeal by his failure to inform counsel of his desire to appeal within the thirty-day period allowed for filing a notice of appeal under Arkansas Rule of Appellate Procedure—Criminal 2(a)(4). *Bankston v. State*, 354 Ark. 473, 125 S.W.3d 146 (2003) (per curiam); *Jones v. State*, 294 Ark. 659, 748 S.W.2d 117 (1988) (per curiam).

Here, petitioner never states that he informed Mr. May within the thirty-day period allowed for filing a notice of appeal that he desired to appeal. In these circumstances, petitioner has not demonstrated that Mr. May had any obligation to perfect an appeal.

Motion denied.