

SUPREME COURT OF ARKANSAS

No. CR 09-632

LEE A. CROY
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered October 8, 2009

PRO SE MOTION FOR
APPOINTMENT OF COUNSEL AND
FOR EXTENSION OF TIME TO FILE
APPELLANT'S BRIEF [CIRCUIT
COURT OF PULASKI COUNTY, CR
2005-3049, HON. WILLARD PROCTOR,
JR., JUDGE

MOTION TREATED AS MOTION TO
RELIEVE COUNSEL AND PROCEED
IN FORMA PAUPERIS AND
GRANTED IN PART AND DENIED
IN PART.

PER CURIAM

In 2006, a jury found appellant Lee A. Croy guilty of two counts of first-degree sexual assault and sentenced him to an aggregate term of 360 months' imprisonment in the Arkansas Department of Correction. The Arkansas Court of Appeals affirmed the judgment. *Croy v. State*, CACR 06-1039 (Ark. App. Oct. 31, 2007). Through retained counsel, Mr. Craig Lambert, appellant timely filed a petition for postconviction relief under Arkansas Rule of Criminal Procedure 37.1 that was denied by order entered on March 4, 2009. Appellant lodged an appeal of that order in this court and has now filed a pro se motion for appointment of counsel and for an extension of time to file his brief.

In his motion, appellant avers that he is indigent, states a number of reasons for appointment of counsel, questions whether Mr. Lambert was relieved as counsel, complains of what he contends is a conflict of interest as a result of appellant's inability to pay Mr. Lambert's fees, and requests an additional thirty days in which to file appellant's brief. Because Mr. Lambert was not relieved as counsel,

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we treat the motion as one to relieve counsel and proceed *in forma pauperis*.

Arkansas Rule of Appellate Procedure—Criminal 16(a) provides that the appellate court has exclusive jurisdiction to relieve counsel after the notice of appeal of a judgment of conviction has been filed. This court has applied that rule to appeals from adverse orders in proceedings under Rule 37.1. *Johnson v. State*, 362 Ark. 453, 208 S.W.3d 783 (2005) (per curiam). The record before us indicates that appellant filed a pro se notice of appeal at 3:46 p.m. on March 19, 2009. The trial court entered an order relieving Mr. Lambert as counsel at 4:46 p.m. on the same day. The order in circuit court was not effective to relieve counsel because the notice of appeal had already been filed. *Thomas v. State*, 335 Ark. 262, 983 S.W.2d 122 (1998) (per curiam) (ruling limited on other basis by *Hammon v. State*, 347 Ark. 267, 65 S.W.3d 853 (2001)); *see also Rhodes v. State*, 2009 Ark. 210, ___ S.W.3d ___.

Appellant also filed in the circuit court a petition to proceed *in forma pauperis* that the trial court granted. We will permit appellant to proceed on appeal as a pauper, and Mr. Lambert, who remains attorney of record, is therefore appointed to represent appellant. We decline to appoint other counsel to represent appellant. The financial issues concerning fees that appellant cites are not sufficient as grounds to relieve Mr. Lambert. *See Evans v. State*, 370 Ark. 427, 260 S.W.3d 265 (2007) (per curiam).

Appellant's request for an extension of time is granted. Appellant's brief is now due thirty days from the date of this opinion.

Motion treated as motion to relieve counsel and proceed *in forma pauperis* and granted in part and denied in part.