

Cite as 2009 Ark. 421
ARKANSAS SUPREME COURT
No. CR-08-1460

WESLEY BARRINGER
PETITIONER

V.

STATE OF ARKANSAS
RESPONDENT

Opinion Delivered September 17, 2009

PRO SE MOTION FOR BELATED
APPEAL [CIRCUIT COURT OF
JEFFERSON COUNTY, NOS. CR
2002-480, CR 2002-551, CR 2004-389,
CR 2006-1065, HON. BERLIN C.
JONES, JUDGE]

MOTION GRANTED.

PER CURIAM

In 2008, petitioner Wesley Barringer was sentenced, as a result of a judgment revoking his probation on a previous conviction of four counts of second-degree forgery, theft of property, possession of a controlled substance, use of paraphernalia to manufacture methamphetamine, and nonsupport, to an aggregate term of 120 months' imprisonment in the Arkansas Department of Correction. The judgment was not appealed, and petitioner filed a motion for belated appeal of the judgment in this court under Arkansas Rule of Appellate Procedure—Criminal 2(e). We remanded to the trial court to conduct a hearing, take evidence, and provide findings of fact on the issue of whether petitioner advised trial counsel, Mr. Greg Robinson, to appeal within thirty days from the date the judgment was entered. *Barringer v. State*, 2009 Ark. 147 (unpublished per curiam).

The trial court has now returned its findings, and, after a hearing at which the court heard testimony as to discussions between petitioner and Mr. Robinson on whether to lodge an appeal, found that petitioner had advised Mr. Robinson that he wished to appeal the

judgment within the thirty-day period for filing notice of appeal. Based upon those findings, we grant petitioner's motion for belated appeal.

This court will grant a motion for belated appeal when no timely notice of appeal was filed due to attorney error. *Williams v. State*, 366 Ark. 583, 237 S.W.3d 93 (2006) (per curiam). Relief from failure to perfect an appeal is provided as part of the appellate procedure granting the right to a first appeal. *Id.* at 584, 237 S.W.3d at 94 (quoting *McDonald v. State*, 356 Ark. 106, 111, 146 S.W.3d 883, 887 (2004)). Mr. Robinson was at fault in failing to perfect the appeal to this court, and we therefore grant the motion for belated appeal. As the motion is granted based upon attorney error, a copy of this opinion will be forwarded to the Committee on Professional Conduct. *See Brown v. State*, 2009 Ark. 379 (per curiam).

Petitioner includes within his motion a request to proceed *in forma pauperis* on appeal and has attached an affidavit in support of that request. The State has not objected and we grant the request. Mr. Robinson is appointed to represent petitioner.

We direct our clerk to lodge the partial record. Counsel is directed to file a petition for writ of certiorari within thirty days to call up the entire record, or that portion of it necessary for the appeal to proceed in this court. Our clerk shall set a briefing schedule and proceed with the appeal upon the return of any such writ.

Motion granted.

Appellant, pro se.

One brief only.