

SUPREME COURT OF ARKANSAS

Kevin McKenzie, a/k/a Keith Barrett v. State of Arkansas

134 S.W.3d 5 (Ark. 2003) · No. CR 03-775 · Decided December 4, 2003

SUMMARY

The Supreme Court of Arkansas denied counsel's motion to withdraw and motion for rule on the clerk after finding that the record was untimely filed because out-of-state counsel attempted to file it without associating with Arkansas counsel. The court ordered counsel to appear and show cause why he should not be held in contempt for refusing to accept responsibility and comply with prior orders.

CASE DETAILS

COURT	Supreme Court of Arkansas
JURISDICTION	Arkansas
DECIDED	December 4, 2003
DOCKET	CR 03-775
DISPOSITION	other
PROCEDURAL POSTURE	In a criminal appeal, appellant's out-of-state attorney sought to withdraw as counsel and sought a rule on the clerk after the record was not timely filed. The Supreme Court denied both motions and ordered the attorney to show cause why he should not be held in contempt for refusing to comply with the court's prior orders.
PRECEDENTIAL VALUE	Published per curiam opinion of the Supreme Court of Arkansas
PARTIES	Kevin McKenzie, a/k/a Keith Barrett v. State of Arkansas

TOPICS

- appellate procedure
- criminal procedure
- preservation of error

PRACTICE AREAS

- appellate procedure
- criminal procedure
- attorney admission and discipline

QUESTIONS PRESENTED

1. Whether appellant's out-of-state attorney should be permitted to withdraw as counsel after failing to comply with Arkansas filing and admission requirements.

2. Whether the court should grant a rule on the clerk concerning the untimely filing of the record.
3. Whether counsel's repeated refusal to comply with the court's orders warranted an order to show cause for contempt.

HOLDINGS

1. The clerk properly declined to file the record because Waldman was not licensed in Arkansas and did not appear with an attorney licensed to practice there.
2. The motion to withdraw as counsel and the motion for rule on the clerk were denied because counsel refused to accept responsibility for the untimely filing and refused to comply with the court's prior orders requiring participation by Arkansas counsel.
3. Counsel was ordered to appear before the Supreme Court to show cause why he should not be held in contempt for refusing to comply with the court's prior orders.

KEY QUOTATIONS

"We have held that a statement that it was someone else's fault or no one's fault will not suffice." (134 S.W.3d at 6)

"Accordingly, we order Mr. Waldman to appear before us on January 15, 2004, to show cause why he should not be held in contempt of court." (134 S.W.3d at 6)

FACTUAL BACKGROUND

On June 6, 2003, Charles E. Waldman attempted to file the record, but he was not licensed to practice law in Arkansas and was not accompanied by Arkansas counsel. The clerk declined to file the record, making subsequent filing efforts untimely. Despite two prior Supreme Court orders directing Waldman to accept responsibility and associate with licensed Arkansas counsel, he repeatedly refused to do so and continued to attribute fault to the clerk or another attorney.

PROCEDURAL HISTORY

Counsel attempted to file the record without appearing with an attorney licensed in Arkansas, and the clerk declined to file it. The Supreme Court previously denied counsel's motion to withdraw and then issued a second order directing him to accept responsibility for the untimely filing and file an appropriate motion with the participation of Arkansas counsel. Counsel refused to comply and again asserted that others were responsible. The court denied the motions and ordered him to appear and show cause regarding contempt.

DISPOSITION

other

CASES CITED

- McKenzie v. State, 354 Ark. 2, 116 S.W.3d 461 (2003)
- McKenzie v. State, 354 Ark. 479, 125 S.W.3d 173 (2003)

- Fisher v. State, 352 Ark. 567, 104 S.W.3d 744 (2003)

OPINION

PER CURIAM.

134 S.W.3d 5 (2003) Kevin McKENZIE, a/k/a Keith Barrett v. STATE of Arkansas. No. CR 03-775. Supreme Court of Arkansas. December 4, 2003. Charles E. Waldman, for appellant. Mike Beebe, Att'y Gen., by: Jeffrey Weber, Ass't Att'y Gen., for appellee. PER CURIAM. Appellant's attorney, Charles E. Waldman, has filed an answer to our second denial of his motion to withdraw as counsel and motion for rule on the clerk, and asserts once again that the untimely filing of the record was not his fault, and that the rule on the clerk should be granted because someone else was at fault.

On June 6, 2003, Mr. Waldman attempted to file the record with the clerk. However, Mr. Waldman is not licensed in our state, and Mr. Waldman did not appear with any attorney licensed to practice in Arkansas in his attempt to file the record in this case or in his motion to withdraw from the case. Our clerk correctly declined to file the record, and any subsequent effort to file the record was deemed untimely.

By our per curiam order, McKenzie v. State, 354 Ark. 2, 116 S.W.3d 461 (2003) ("McKenzie I"), we denied his motion to withdraw and instructed him to accept responsibility for the untimely filing of the record and to associate with an attorney admitted to practice in Arkansas for the *6 purpose of filing his second motion, pursuant to Rule XIV of the Rules Governing Admission to the Bar.

However, in his second motion, Mr. Waldman declined to follow our instructions and argued that another attorney, Alvin Q. Malone, who is admitted to practice in Arkansas, had participated in the trial below, that Mr. Waldman's failure to associate with Arkansas counsel in seeking to file the record should be forgiven, and that any fault should be borne by our clerk or by Mr. Malone.

We note that Mr. Malone has not signed any pleadings or motions under our consideration in this case. We issued a second per curiam order, McKenzie v. State, 354 Ark. 479, 125 S.W.3d 173 (2003) ("McKenzie II"), directing Mr. Waldman to accept responsibility for the untimely filing within thirty days and to file an appropriate motion to this court with the participation of a licensed attorney from Arkansas.

Mr. Waldman has refused to follow this order, but once again presents a motion arguing that the untimely filing is someone else's fault. In his motion, Mr. Waldman further asserts that we recently have held in Fisher v. State, 352 Ark. 567, 104 S.W.3d 744 (2003) that "a statement that it was someone other than the attorney's fault will suffice." That assertion is an incorrect quotation of our holding in Fisher, *supra*.

In Fisher, we stated, "We have held that a statement that it was someone else's fault or no one's fault will not suffice." Id. (emphasis added). Mr. Waldman persists in his refusal to accept responsibility for his breach of our rules.

Accordingly, we order Mr. Waldman to appear before us on January 15, 2004, to show cause why he should not be held in contempt of court. Motion to withdraw as counsel and motion for rule on the clerk denied.