

SUPREME COURT OF ARKANSAS

Valenzuela v. State

358 Ark. 348 (2004) · Decided July 1, 2004

SUMMARY

The Arkansas Supreme Court addresses procedural issues arising from an untimely criminal appeal and notices of appeal signed by an attorney not licensed to practice in Arkansas. After concluding that disciplinary proceedings against that attorney had been resolved, the court directed the clerk to remove him as counsel, appointed new counsel for the indigent appellant, and left the appeal with the court of appeals to address the pending motion to dismiss and related jurisdictional issues.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Arkansas
DECIDED	July 1, 2004
DISPOSITION	remanded
PROCEDURAL POSTURE	The State moved to dismiss Valenzuela's criminal appeal on jurisdictional grounds, asserting that both notices of appeal were ineffective because they were signed by an attorney not licensed to practice law in Arkansas. The Supreme Court addressed the representation issue, removed Waldman as counsel, appointed new counsel, and left the appeal with the court of appeals to resolve the motion to dismiss and other jurisdictional issues.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion
PARTIES	Jose Luis Valenzuela v. State

TOPICS

- appellate procedure
- appellate jurisdiction
- criminal procedure
- final judgment rule

PRACTICE AREAS

- criminal appellate procedure
- appellate jurisdiction
- unauthorized practice of law
- indigent appellate representation

QUESTIONS PRESENTED

1. What action should the Supreme Court take regarding an appeal in which the notices of appeal were signed by an attorney not authorized to practice law in Arkansas?
2. Whether the appeal and the State's remaining jurisdictional motion should proceed after the disciplinary proceedings against Waldman were resolved.

HOLDINGS

1. Because Waldman was enjoined from practicing law in Arkansas, the clerk was directed to remove him as Valenzuela's attorney and to accept no further pleadings from him in the matter.
2. Because the record showed that Valenzuela was indigent, new counsel was to be promptly appointed to represent him on appeal.
3. The court of appeals was directed to address and decide the State's motion to dismiss and the other pending and associated jurisdictional issues.

KEY QUOTATIONS

"Thus, we may now proceed in the instant appeal, and do so first by directing the clerk of the supreme court and court of appeals to notify both Mr. Valenzuela and Mr. Waldman that the court will accept no further pleadings in this matter and the clerk shall remove Waldman's name as Valenzuela's attorney."

FACTUAL BACKGROUND

Valenzuela's criminal judgment was entered while he was represented by Ralph Blagg. His notice of appeal was filed one day late by Charles E. Waldman, a Tennessee attorney who was not licensed in Arkansas and was not associated with Blagg. The State later challenged the appeal on the ground that both notices of appeal were ineffective because Waldman signed them. Waldman was subsequently found in contempt and enjoined from practicing law in Arkansas.

PROCEDURAL HISTORY

A judgment was entered on August 27, 2002. A notice of appeal was filed one day late by Charles E. Waldman, a Tennessee attorney who was not authorized to practice in Arkansas and was not associated with trial counsel Ralph Blagg. After the trial court dismissed the appeal for untimeliness and the clerk refused to accept the record, the Arkansas Supreme Court granted a motion for rule on the clerk and ordered the record filed. The State then moved to dismiss, and the Supreme Court held the matter in abeyance while disciplinary proceedings against Waldman proceeded in *McKenzie v. State*. After deciding *McKenzie* and enjoining Waldman from practicing law in Arkansas, the Supreme Court removed Waldman, ordered appointment of new appellate counsel, and left the remaining jurisdictional issues to the court of appeals.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The clerk of the Supreme Court and Court of Appeals was directed to notify Valenzuela and Waldman that no further pleadings from Waldman would be accepted and to remove Waldman's name as counsel. New counsel was to be promptly appointed for Valenzuela. The court of appeals was to decide the State's motion to dismiss and the other pending and associated jurisdictional issues.

CASES CITED

- Valenzuela v. State, 353 Ark. 653, 113 S.W.3d 80 (2003)
- McKenzie v. State, 356 Ark. 122, 146 S.W.3d 892 (2004)

OPINION

PER CURIAM.

Per Curiam. Appellant, Jose Luis Valenzuela, was coniam. judgment was entered on August 27, 2002, when he was represented by attorney Ralph Blagg. His notice of appeal was filed on September 27, 2002 — one day late —• by Charles E. Waldman, a Tennessee attorney who is not authorized to practice law in Arkansas and who was not associated with Blagg.

The trial court dismissed the appeal for failure to file a timely notice of appeal. Within thirty days after the dismissal order, Waldman filed another notice of appeal. When the record was tendered to the clerk, the clerk refused to accept it for filing because of the untimely notice of appeal from the conviction judgment. Eventually, Blagg, who had not requested to be relieved as Valenzuela's attorney, accepted responsibility for the late tender of the record, and the court granted appellant's motion for rule on the clerk and ordered the record to be filed.

See Valenzuela v. State, 353 Ark. 653, 113 S.W.3d 80 (2003). Next, the State moved to dismiss, stating both notices of appeal had been signed by Waldman and were ineffective because he was not licensed to practice law in Arkansas. It is pointed out that Blagg's motion for rule on the clerk and the supreme court's decision to docket the appeal was based solely on the untimeliness of the filing of the record; however, an appellate court has not yet decided (1) whether an appeal should go forward in light of the failure to file a timely notice of appeal, and (2) whether both notices of appeal were ineffective because they were signed by Waldman, who was not a licensed attorney in this state.

The State's motion to dismiss claimed certain jurisdictional grounds had not yet been addressed in this case. In a per curiam in this case delivered on April 22, 2004, our court noted that disciplinary proceedings were pending against Waldman in McKenzie v. State, 356 Ark. 122, 146 S.W.3d 892 (2004), and, therefore, we held the Valenzuela case and the State's motion to dismiss should be held in abeyance.

Neither this court nor the court of appeals has acted on the jurisdictional issues set out above because Waldman was the subject of disciplinary proceedings in the McKenzie case by acting unlawfully as an attorney. In McKenzie, this court appointed a special master to conduct a hearing and make findings on the contempt issue. Today, this court decided pertinent procedural and substantive issues in the McKenzie case, and this court also found that Waldman violated court orders and was guilty of contempt by declining to associate an attorney who is licensed in Arkansas.

We further enjoined Waldman from engaging in the practice of law in Arkansas. In sum, we note the court in the McKenzie case has accepted the special master's findings and conclusions made concerning Waldman; Waldman is enjoined from practicing law in Arkansas.

Thus, we may now proceed in the instant appeal, and do so first by directing the clerk of the supreme court and court of appeals to notify both Mr. Valenzuela and Mr. Waldman that the court will accept no further pleadings in this matter and the clerk shall remove Waldman's name as Valenzuela's attorney.

Because the record reflects Valenzuela is an indigent, new counsel will promptly be appointed to represent him in this appeal. After taking this action, this court leaves this appeal with the court of appeals to address and decide the motion to dismiss and other pending and associated jurisdictional issues. See Rule 1-2(d) of the Rules of the Supreme Court and Court of Appeals.