

SUPREME COURT OF ARKANSAS

Warren v. State, 351 Ark. 563

97 S.W.3d 386 (2003) · No. CR 03-21 · Decided January 23, 2003

SUMMARY

The Supreme Court of Arkansas held that appointed counsel remained responsible for monitoring filings because she had not been relieved as counsel when the defendant filed a timely pro se notice of appeal. The court ordered counsel to file a motion and affidavit accepting fault for the untimely tender of the record, denied her motion to be relieved as counsel, and stated that the motion for rule on the clerk would then be granted.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Arkansas
DECIDED	January 23, 2003
DOCKET	CR 03-21
DISPOSITION	other
PROCEDURAL POSTURE	After Warren filed a timely pro se notice of appeal from misdemeanor convictions, the appellate record was tendered nine days late. His appointed trial and appellate counsel filed a response declining responsibility for the late tender, sought a fact-finding hearing in the alternative, and moved to be relieved as counsel. The Supreme Court considered whether counsel was responsible for the untimely filing and whether she could withdraw.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion
PARTIES	Johnny Warren v. State of Arkansas

TOPICS

- appellate procedure
- criminal procedure
- right to counsel

PRACTICE AREAS

- criminal appellate procedure
- appellate counsel

QUESTIONS PRESENTED

1. Whether appointed counsel who remained attorney of record was responsible for being aware of Warren's timely pro se notice of appeal and therefore responsible for the untimely tender of the appellate record.
2. Whether counsel should be relieved after the notice of appeal was filed based on Warren's alleged de facto pro se status.

HOLDINGS

1. A timely pro se notice of appeal is proof of the defendant's desire to appeal, and an attorney who has not been relieved by the trial court remains responsible for being aware of filings in the case while serving as attorney of record. Reynolds was therefore responsible for the untimely filing of the record.
2. Counsel's motion to be relieved was denied because she did not establish that relief was in the interest of justice or supported by other sufficient cause under Arkansas Rule of Appellate Procedure-Criminal 16.

KEY QUOTATIONS

"This court dealt with a similar situation in the case of Bealer v. State, 314 Ark. 352, 862 S.W.2d 259 (1993)." (387)

"Bealer is controlling in this case, and Ms. Reynolds is responsible for being aware of the filing of the notice of appeal." (387)

"Ms. Reynolds has not met these conditions and her motion is denied." (387)

FACTUAL BACKGROUND

Warren was represented by appointed counsel, Gina Reynolds, at a bench trial resulting in misdemeanor convictions and a \$500 fine. Warren filed a pro se notice of appeal while Reynolds remained attorney of record, but the appellate record was tendered nine days late after Warren obtained the record. Reynolds asserted that Warren no longer wanted her representation and that she was unaware of the notice of appeal.

PROCEDURAL HISTORY

Following a July 1, 2002 bench trial in the Pulaski County Circuit Court, Warren was convicted of misdemeanor driving while intoxicated, driving with a suspended license, refusal to submit to blood analysis, and failure to wear a seatbelt. Judgment was entered July 15, 2002; Warren filed a timely pro se notice of appeal on August 28, 2002, and the record was tendered after the applicable ninety-day period. The Supreme Court directed counsel to file a motion and affidavit accepting fault so that a motion for rule on the clerk could be granted, and denied counsel's motion to be relieved.

DISPOSITION

other

CASES CITED

- Bealer v. State, 314 Ark. 352, 862 S.W.2d 259 (1993)

OPINION

PER CURIAM.

97 S.W.3d 386 (2003) 351 Ark. 563 Johnny WARREN v. STATE of Arkansas. No. CR 03-21. Supreme Court of Arkansas. January 23, 2003. Gina H. Reynolds, for appellant. No response. PER CURIAM. On July 1, 2002, following a bench trial in the Circuit Court of Pulaski County, Johnny Warren was found guilty of misdemeanor driving while intoxicated, driving with a suspended license, refusal to submit to a blood analysis, and failure to wear a seatbelt.

A fine of \$500 was imposed. Warren was represented at his bench trial by his appointed attorney, Gina Reynolds. The judgment and disposition order in this case was entered on July 15, 2002. On July 30, 2002, Warren filed a pro se "Motion for Post-Trial Relief," asking the court to reverse the conviction.

The motion was deemed denied on August 29, 2002. An order denying the motion on the ground that the judgment was on appeal was not entered until November 7, 2002. On August 28, 2002, Warren had timely filed a notice of appeal.[1] The record was tendered to the clerk of this court on December 11, 2002.

Because the record was not received within 90 days of the effective date of the notice of appeal, Ms. Reynolds was advised that a motion for rule on the clerk would be necessary. Ms. Reynolds was still Warren's attorney of record because there was no order in the record relieving her as counsel before the notice of appeal was filed. See Ark. R.App. P.Crim.

16. Instead of filing a motion for rule on the clerk, Ms. Reynolds filed the instant "Response to Request for Rule on the Clerk." She states that Warren no longer wanted her as his attorney, and that she was not *387 made aware by Warren or the circuit court clerk that a timely notice of appeal had been filed. She also notes that Warren picked up the record and was informed by the deputy circuit clerk that the record was due to be filed in the appellate court that same day, December 2, 2002, but he did not tender the record until nine days later.

Reynolds declines to accept responsibility for the late tender of the record in these circumstances and asks to be relieved of further responsibility in the matter. She asks in the alternative that, if this Court should be unwilling to accept her declining of responsibility for the late tender, the matter be remanded for a fact-finding hearing. This court dealt with a similar situation in the case of Bealer v. State, 314 Ark.

352, 862 S.W.2d 259 (1993). In Bealer, the petitioner's attorney was unaware that his client had filed the appeal pro se without informing his attorney of his intentions. The trial court ruled that the petitioner waived his right to appeal by not directly informing his attorney within thirty days of

the end of his trial. Id. This court reversed, holding that the filing of a timely notice of appeal pro se is proof of the defendant's desire to appeal.

Id. The court also held that an attorney who has not been relieved as counsel by the trial court must be held responsible for being aware of filings in the case in which he or she has remained the attorney of record. Id. Bealer is controlling in this case, and Ms. Reynolds is responsible for being aware of the filing of the notice of appeal. Ms. Reynolds must file within thirty days from the date of this per curiam a motion and affidavit, accepting fault for an untimely filing of the record.

Upon filing same, the motion for rule on the clerk to accept the record will be granted, and a copy of the opinion will be forwarded to the Committee on Professional Conduct. Simultaneously with her "Response to Request for Motion for Rule on the Clerk," Ms. Reynolds also filed a "Motion to be Relieved as Counsel," arguing that Warren will not be prejudiced by proceeding pro se because he is already de facto proceeding pro se.

According to Rule 16 of the Arkansas Rules of Appellate Procedure-Criminal, after the notice of appeal is filed with this court, we shall have exclusive jurisdiction to relieve counsel in the interest of justice or for other sufficient cause. Ms. Reynolds has not met these conditions and her motion is denied. NOTES [1] A notice of appeal filed before disposition of any post-trial motions shall be treated as filed on the day after the entry of an order disposing of the last motion outstanding or the day after the motion is deemed denied by operation of law.

Ark. R.App. P.Crim. 2(b)(2).