

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)

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