

SUPREME COURT OF ARKANSAS

Brian K. Walker v. State of Arkansas

331 S.W.3d 587 (Ark. 2009) · No. CR 09-934 · Decided September 17, 2009

SUMMARY

The Supreme Court of Arkansas granted Brian K. Walker's motion for rule on clerk, holding that the record-extension requirements under Arkansas Rule of Appellate Procedure–Criminal 4(c) were sufficiently met. The court denied appointed counsel's motion to be relieved because counsel did not establish that withdrawal was warranted in the interest of justice or for other sufficient cause.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Arkansas
DECIDED	September 17, 2009
DOCKET	CR 09-934
DISPOSITION	other
PROCEDURAL POSTURE	After being convicted by a jury in Pulaski County Circuit Court and sentenced as a habitual offender, Appellant filed a motion for rule on clerk after the appellate clerk refused to accept the record because the extension order did not state that all parties consented. Appellant's counsel also moved to withdraw.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Brian K. Walker v. State of Arkansas

TOPICS

- appellate procedure
- criminal procedure
- right to counsel

PRACTICE AREAS

- criminal appellate procedure
- criminal procedure
- appointed appellate counsel

QUESTIONS PRESENTED

1. Whether the record should be accepted under Arkansas Rule of Appellate Procedure—Criminal 4 when the extension motion was served on the prosecuting attorney, no objection was filed, and counsel asserted that both parties had been notified and did not object.
2. Whether appellate counsel demonstrated interest of justice or other sufficient cause to withdraw under Arkansas Rule of Appellate Procedure—Criminal Rule 16.

HOLDINGS

1. The requirements of Rule 4(c) were sufficiently satisfied under the circumstances, so the motion for rule on clerk was granted.
2. Counsel's motion to be relieved was denied because merely stating that the trial court had declared Appellant indigent did not establish that withdrawal was in the interest of justice or supported by other sufficient cause.

KEY QUOTATIONS

“The motion for rule on clerk is granted; the motion to be relieved as counsel is denied.” (588)

FACTUAL BACKGROUND

Brian K. Walker was convicted by a jury of rape and sentenced as a habitual offender to 480 months' imprisonment. His counsel timely filed a notice of appeal and moved for an extension of time to file the record because the court reporter could not complete the record by the original due date. Although the motion was served on the prosecuting attorney and counsel asserted that neither party objected, the appellate clerk rejected the tendered record because the motion and order did not expressly state that all parties consented. Counsel separately sought withdrawal based only on the trial court's declaration that Walker was indigent.

PROCEDURAL HISTORY

Appellant was tried in Pulaski County Circuit Court, convicted of rape, and sentenced to 480 months' imprisonment as a habitual offender. Counsel timely filed a notice of appeal and obtained a circuit-court extension of time to file the record after the court reporter could not complete it by the original deadline. The Supreme Court of Arkansas granted the motion for rule on clerk but denied counsel's motion to be relieved because counsel showed no interest-of-justice or other sufficient cause for withdrawal.

DISPOSITION

other

CASES CITED

- Reid v. State, 375 Ark. 68, 289 S.W.3d 54 (2008) (per curiam)
- Tice v. State, 365 Ark. 410, 230 S.W.3d 557 (2006) (per curiam)
- In re Rules of Supreme Court and Court of Appeals, Rule 4-3; Rules of Appellate Procedure—Criminal, Rule 4; and Rules of Criminal Procedure, Rule 24.3, 374 Ark. App'x 566 (Sept. 18, 2008)

OPINION

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PER CURIAM.

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Brian K. WALKER, Appellant, v. STATE of Arkansas, Appellee. No. CR 09-934. Supreme Court of Arkansas. September 17, 2009. James P. Clouette, Little Rock, for appellant. No response. PER CURIAM. Appellant, Brian K. Walker, by and through his attorney, James P. Clouette, has filed a motion for rule on clerk and a motion to be relieved as counsel. The State has not responded to either motion. Appellant was tried by a jury in Pulaski County Circuit Court, convicted of rape, and sentenced as a habitual offender to 480 months' imprisonment. Mr. Clouette timely filed a notice of appeal on Appellant's behalf. After the court reporter notified Mr. Clouette that she would not be able to complete the record by the due date, he timely filed a written motion to extend the time to file the record pursuant to Ark. R.App. P. Civ. 5 and Ark. R.App. P. Crim. 4. The circuit court granted the motion and entered an order extending the time to file the record on appeal until August 18, 2009. When Mr. Clouette tendered the record to the clerk of this court on August 7, 2009, the clerk refused to accept it because the motion and order granting the extension of time did not state that all parties consented to the extension, as required by Ark. R.App. P. Crim. 4(c)(1). Arkansas Rule of Appellate Procedure Criminal 4 was amended and made effective October 1, 2008. See *In re Rules of Supreme Court and Court of Appeals*, Rule 4-3; *Rules of Appellate Procedure Criminal*, Rule 4; and *Rules of Criminal Procedure*, Rule 24.3, 374 Ark. App'x 566 (Sept. 18, 2008). As a result, Ark. R.App. P. Crim. 4, rather than Ark. R.App. P. Civ. 5, now provides the procedure to be followed in a criminal case when an extension of time is sought within which to file the record. An extension is permitted where the requirements of Rule 4 are met. Rule 4(c)(1) provides in pertinent part as follows: If any party has designated stenographically reported material for inclusion in the record on appeal, the circuit court, by order entered before expiration of the period prescribed by subdivision (b) of this rule or by a prior extension order, may extend the time for filing the record. A motion by the defendant for an extension of time to file the record shall explain the reasons for the requested extension, and a copy of the motion shall be served on the prosecuting attorney. The circuit court may enter an order granting the extension if the circuit court finds that all parties consent to the extension and that an extension is necessary for the court reporter to include the stenographically reported material in the record on appeal. If the prosecuting attorney does not file a written objection to the extension within ten (10) days after being served a copy of the extension motion, the prosecuting attorney shall be deemed to have consented to the extension, and the circuit court may so find. Rule 4(c)(1) provides that a copy of the motion shall be served on the prosecuting attorney. The record tendered to this court with the present motion reflects that a copy of the motion for extension was served on the prosecuting attorney. There is no response from the prosecuting *588

attorney in the partial record. Again, we note that the State has not filed a response to the current motion for rule on clerk. Mr. Clouette asserts in the motion that both parties were notified and there was no objection to the extension. Under similar facts and circumstances, we have determined compliance with Rule 4(c). *Reid v. State*, 375 Ark. 68, 289 S.W.3d 54 (2008) (per curiam). Accordingly, we grant the motion for rule on clerk. Mr. Clouette has also filed a motion to be relieved as counsel, stating therein only that the trial court has declared Appellant indigent. Arkansas Rule of Appellate Procedure Criminal Rule 16 clearly states that there is no automatic right of withdrawal. *Tice v. State*, 365 Ark. 410, 230 S.W.3d 557 (2006) (per curiam). Mr. Clouette has not shown that his motion should be granted in the interest of justice or for other sufficient cause. His motion to be relieved as counsel is therefore denied. The motion for rule on clerk is granted; the motion to be relieved as counsel is denied.