

SUPREME COURT OF ARKANSAS

McKenzie v. State

358 Ark. 344 (2004) · Decided July 1, 2004

SUMMARY

The Arkansas Supreme Court found attorney Charles E. Waldman in contempt for failing to comply with orders requiring him to associate with an Arkansas-licensed attorney and provide an affidavit concerning the late filing of a criminal appeal record. The court concluded that Waldman had engaged in the unauthorized practice of law, enjoined him from practicing law in Arkansas until purging the contempt, removed him from representing Kevin McKenzie on appeal, and directed that the opinion be forwarded to Tennessee disciplinary authorities.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Arkansas
DECIDED	July 1, 2004
DISPOSITION	other
PROCEDURAL POSTURE	The Supreme Court of Arkansas considered whether attorney Charles E. Waldman should be held in contempt for failing to comply with the court's orders concerning the late filing of the criminal appeal record and for engaging in the unauthorized practice of law. The court reviewed factual findings made by a special master appointed by prior per curiam order.
STANDARD OF REVIEW	The Supreme Court accepted and relied on the special master's factual findings after a hearing; no separate standard of review was stated.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Kevin McKenzie v. State of Arkansas

TOPICS

- appellate procedure
- criminal procedure
- right to counsel

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Waldman violated the Supreme Court of Arkansas's orders by failing to file a joint motion with an Arkansas-licensed attorney and an affidavit accepting responsibility for the late filing.
2. Whether Waldman's conduct constituted the unauthorized practice of law in Arkansas.
3. Whether Waldman should be held in contempt, enjoined from practicing law in Arkansas until purging the contempt, and removed from representing McKenzie on appeal.

HOLDINGS

1. Waldman violated the court's orders by repeatedly failing to associate with an Arkansas-licensed attorney and file the required affidavit accepting responsibility for the late filing.
2. Waldman engaged in the unauthorized practice of law by representing McKenzie in Arkansas without being licensed in Arkansas and without an affirmative record showing that he had been admitted pro hac vice.
3. Waldman was held in contempt, enjoined from practicing law in Arkansas until he purged the contempt by following the proper pro hac vice admission rules, and removed from representing McKenzie in the appeal.

KEY QUOTATIONS

“By declining to follow this court’s order to associate with an attorney licensed to practice in Arkansas, Mr. Waldman not only violated the orders of the court, but also engaged in the unauthorized practice of law.”

“Accordingly, we find Mr. Waldman in contempt of court, and we enjoin him from engaging in the practice of law in Arkansas until he has purged himself of this contempt by following the proper rules for admission pro hac vice.”

FACTUAL BACKGROUND

Charles E. Waldman was licensed in Tennessee and certain federal circuits but was not licensed in Arkansas. He represented Kevin McKenzie in Arkansas trial and appellate proceedings without a recorded pro hac vice admission, while Arkansas attorney Alvin Q. Malone was suspended when the appellate transcript was due. Waldman failed to comply with repeated Supreme Court orders requiring association with an Arkansas-licensed attorney and an affidavit accepting responsibility for the late filing.

PROCEDURAL HISTORY

After the criminal conviction of Kevin McKenzie, Waldman attempted to lodge the appellate transcript but was refused because he was not licensed in Arkansas, while Arkansas attorney Alvin Q. Malone was suspended. The record-filing deadline expired, and the Supreme Court repeatedly ordered Waldman to file a joint motion to withdraw with an Arkansas-licensed attorney and an affidavit accepting responsibility for the late filing. Waldman failed to comply. The court appointed Judge John Cole as special master, accepted his factual findings,

held Waldman in contempt, enjoined him from practicing law in Arkansas until he purged the contempt, and removed him from representing McKenzie on appeal.

DISPOSITION

other

CASES CITED

- McKenzie v. State, 356 Ark. 122, 146 S.W.3d 892 (2004)
- McKenzie v. State, 355 Ark. 259, 134 S.W.3d 5 (2003)
- McKenzie v. State, 354 Ark. 479, 125 S.W.3d 173 (2003)
- McKenzie v. State, 354 Ark. 2, 116 S.W.3d 461 (2003)
- Gregory Fisher v. State of Arkansas, CR-2003-00323

OPINION

PER CURIAM.

Per Curiam. The procedural background of this case has riam. in several earlier per curiam orders. See McKenzie v. State, 356 Ark. 122, 146 S.W.3d 892 (2004); McKenzie v. State, 355 Ark. 259, 134 S.W.3d 5 (2003); McKenzie v. State, 354 Ark. 479, 125 S.W.3d 173 (2003); McKenzie v. State, 354 Ark. 2, 116 S.W.3d 461 (2003).

In our per curiam order dated February 12, 2004, we appointed the Honorable John Cole as a special master in this matter and instructed him to conduct a hearing and to supply us with findings of fact. Judge Cole complied with our order and filed his findings of fact with this court on June 22, 2004.

After conducting a hearing, Judge Cole made the following findings of fact, which we accept: Charles E. Waldman, respondent, is and was at all times herein a licensed attorney in good standing in the State of Tennessee, and who was admitted to practice in the U.S. Court of Appeals of the Fourth, Fifth, and Sixth Circuits. Alvin Quincy Malone was an attorney licensed in both Tennessee and Arkansas.

He was licensed in Arkansas on April 9, 2001, but was automatically suspended for nonpayment of bar dues on March 2, 2002. He was reinstated on June 25, 2003, then suspended again for nonpayment on March 2, 2004, and reinstated on April 5, 2004. Mr. Malone was initially contacted by Kevin McKenzie in the Crawford County Criminal Proceedings and brought respondent Waldman into the case.

Mr. Malone filed a notice of appearance of counsel in State vs. McKenzie on November 19, 2001. He filed one pretrial motion. Mr. Malone has not been relieved as an attorney of record by the

Crawford County Circuit Court. At different times both Judge Floyd Rogers and Judge Gary Cottrell presided at the trial level in State vs. McKenzie. It is evident that both trial judges were aware Mr. Waldman was not licensed in Arkansas.

No verbal or written order was stated or entered into the record allowing Mr. Waldman to practice pro hac vice. No written statement was filed by Mr. Waldman submitting himself to disciplinary procedure applicable to Arkansas lawyers. Mr. Waldman was allowed by both judges to appear and represent defendant McKenzie. A judgement of conviction in State vs. McKenzie was entered on November 6, 2002, and Mr. Waldman filed a notice of appeal.

On June 3, 2003, Mr. Waldman attempted to timely lodge the transcript with the supreme court clerk, but was refused because he was not licensed in Arkansas. On June 3, 2003, Mr. Malone's Arkansas license was under suspension. Mr. Waldman was not aware of Mr. Malone's suspension. Time to file [the] record of State vs. McKenzie expired on June 6, 2003.

On July 3, 2003, Mr. Waldman moved to withdraw and in a separate motion, Mr. W Gary Kennan, an Arkansas licensed attorney, moved for a belated appeal and rule on the clerk. By per curiam delivered September 4, 2003, the supreme court denied the motion to withdraw and ordered Mr. Waldman to file a second motion to withdraw jointly with a licensed attorney from Arkansas and to file an affidavit accepting responsibility for allowing the transcript filing time to expire.

On September 25, 2003, Mr. Waldman filed a second motion to withdraw and a motion for rule on the clerk. It was not filed jointly with an Arkansas lawyer, and no affidavit was filed. Instead the motion asserted Alvin Q. Malone, an attorney licensed in Arkansas, also represented the defendant at all operative times, and appellant was entitled to have the record filed.

By per curiam delivered October 16, 2003, the supreme court again ordered Mr. Waldman to file the motion jointly with an Arkansas licensed attorney along with an affidavit accepting responsibility for the late filing. He was allowed 30 days in which to do so.

On November 13, 2003, Mr. Waldman filed an "answer" in which he reasserted Alvin Q. Malone, an Arkansas licensed attorney, also represented the defendant and no orders of the court were ever made releasing Mr. Malone from his duties to defendant.

The answer was not filed jointly with an Arkansas licensed attorney and was not accompanied with an affidavit of responsibility. In the case of Gregory Fisher vs. State of Arkansas, CR-2003-00323, Supreme Court of Arkansas, Mr. Waldman was allowed to file the transcript with the supreme court. Fisher was a co-defendant with McKenzie. This fact was offered as evidence that the supreme court clerk made a mistake in refusing to file the transcript in this case.

The supreme court clerk did not make a mistake in refusing to file the transcript in this case. Mr. Waldman was not licensed in Arkansas. Nothing in the record affirmatively indicated he had been

admitted pro hac vice at the trial level. Mr. Malone was suspended and not in good standing at the time. Based on the foregoing factual findings, we conclude that Mr. Waldman is in contempt of this court.

By declining to follow this court's order to associate with an attorney licensed to practice in Arkansas, Mr. Waldman not only violated the orders of the court, but also engaged in the unauthorized practice of law. Accordingly, we find Mr. Waldman in contempt of court, and we enjoin him from engaging in the practice of law in Arkansas until he has purged himself of this contempt by following the proper rules for admission pro hac vice.

Finally, we are removing Mr. Waldman from representing Kevin McKenzie in this appeal. A copy of this opinion will be forwarded to Tennessee's Committee on Professional Conduct.