

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