

SUPREME COURT OF ARKANSAS

Penn v. Gallagher

2015 Ark. 354 (2015) · No. CV-15-397 · Decided October 1, 2015

SUMMARY

The Arkansas Supreme Court considered Allen Lynn Penn’s petition to proceed in forma pauperis in connection with an appeal concerning a motion for rule on clerk. The court remanded the matter to the Pulaski County Circuit Court and directed the circuit clerk to submit certified, file-marked copies of the underlying petition and order denying it within ten days.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Arkansas
DECIDED	October 1, 2015
DOCKET	CV-15-397
DISPOSITION	remanded
PROCEDURAL POSTURE	Penn sought appellate review of the Pulaski County Circuit Court's denial of his petition to proceed in forma pauperis and tendered an appeal record that lacked a file-marked copy of the petition and denial order.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion
PARTIES	Allen Lynn Penn v. Richard Gallagher, Custodian of Records, Arkansas State Crime Lab, Kermit B. Channell, Executive Director, Arkansas State Crime Lab

TOPICS

- appellate procedure
- civil procedure

PRACTICE AREAS

- civil procedure
- appellate procedure

QUESTIONS PRESENTED

1. Whether the Arkansas Supreme Court could properly consider Penn's petition to proceed in forma pauperis without certified, file-marked copies of the circuit-court petition and order denying it.
2. Whether the matter should be remanded to obtain the missing certified, file-marked documents.

HOLDINGS

1. Proper consideration of Penn's petition to proceed in forma pauperis required certified, file-marked copies of both the petition filed in circuit court and the circuit court's order denying it.
2. The matter was remanded with direction that the Pulaski County Circuit Clerk submit certified, file-marked copies of the petition and denial order to the Supreme Court within ten days.

KEY QUOTATIONS

“We find that proper consideration cannot be given to Penn’s petition to proceed in forma pauperis filed in this court without a certified, file-marked copy of the petition to proceed in forma pauperis that Penn filed in circuit court and a certified, file-marked copy of the circuit court order denying Penn’s petition.” (at 2)

“Accordingly, we remand the matter to the circuit court with direction that the Pulaski County Circuit Clerk submit to this court within ten days a certified, file-marked copy of the petition and the order denying it.” (at 2)

FACTUAL BACKGROUND

Penn sought leave to proceed in forma pauperis so that he could file a motion for rule on clerk without paying the required filing fee. He appended an affidavit of indigency and tendered both the motion and the in forma pauperis petition. The circuit court denied the petition, but neither the petition nor the denial order was file-marked or assigned a case number. When Penn tendered the appeal record, it was rejected because it did not contain a file-marked copy of the order from which he sought to appeal.

PROCEDURAL HISTORY

Penn tendered to the Pulaski County Circuit Court a pro se petition for leave to proceed in forma pauperis in connection with a proposed petition for writ of mandamus. The circuit court denied the petition without the petition or order being file-marked or assigned a case number. Penn filed a notice of appeal, but the Arkansas Supreme Court clerk rejected the tendered record because it lacked a file-marked copy of the order appealed from. The Supreme Court remanded to the circuit court for submission of certified, file-marked copies of the petition and denial order.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The Pulaski County Circuit Clerk must submit to the Arkansas Supreme Court within ten days a certified, file-marked copy of the petition for leave to proceed in forma pauperis and the circuit court order denying the

petition.

OPINION

PER CURIAM.

Cite as 2015 Ark. 354 SUPREME COURT OF ARKANSAS No. CV-15-397 ALLEN LYNN PENN Opinion Delivered October 1, 2015 PETITIONER PRO SE PETITION TO PROCEED IN V. FORMA PAUPERIS [PULASKI COUNTY CIRCUIT COURT, NO. ____] RICHARD GALLAGHER, CUSTODIAN OF RECORDS, ARKANSAS STATE HONORABLE TIMOTHY DAVIS FOX, CRIME LAB, AND KERMIT B. JUDGE CHANNELL, EXECUTIVE DIRECTOR, ARKANSAS STATE CRIME LAB REMANDED WITH DIRECTION FOR RESPONDENTS SUBMISSION WITHIN TEN DAYS OF CERTIFIED, FILE-MARKED COPY OF PETITION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND ORDER DENYING PETITION.

PER CURIAM In the instant petition to proceed in forma pauperis, petitioner Allen Lynn Penn seeks leave to file a motion for rule on clerk to lodge the record without paying the filing fee required to file such a motion. Penn appended his affidavit of indigency to the petition and also tendered the motion for rule on clerk to the court for filing.

The record before us reflects that Penn tendered for filing in the Pulaski County Circuit Court a pro se petition for leave to proceed in forma pauperis with respect to a petition for writ of mandamus and also a proposed order granting leave to proceed in forma pauperis.

The record further reflects that the proposed order granting leave to proceed in forma pauperis was marked with a handwritten notation of the date, December 10, 2014, and “Petition Denied,” and it appears to be initialed by Circuit Judge Timothy Davis Fox with the initials, “TDF.” Neither Cite as 2015 Ark. 354 the petition to proceed in forma pauperis nor the order was filed-marked by the circuit clerk or assigned a case number.

On January 12, 2015, Penn filed a notice of appeal from the denial of his petition to proceed in forma pauperis; the notice of appeal does bear a file-mark and was assigned a miscellaneous case number used to docket documents not associated with a specific case. Per the circuit clerk’s certificate of record, the petition and order in the instant case were not file-marked or assigned a case number because the motion to proceed in forma pauperis was denied and no filing fee was submitted; thus, according to the circuit clerk, no civil action was filed that would require the assignment of a case number.

On April 14, 2015, Penn timely tendered the appeal record to the clerk of this court. The record was rejected by the clerk, however, because it lacked a file-marked copy of the order from which Penn seeks to appeal.

We find that proper consideration cannot be given to Penn's petition to proceed in forma pauperis filed in this court without a certified, file-marked copy of the petition to proceed in forma pauperis that Penn filed in circuit court and a certified, file-marked copy of the circuit court order denying Penn's petition.

Accordingly, we remand the matter to the circuit court with direction that the Pulaski County Circuit Clerk submit to this court within ten days a certified, file-marked copy of the petition and the order denying it. Remanded with direction for submission within ten days of certified, file-marked copy of petition for leave to proceed in forma pauperis and order denying petition.