

SUPREME COURT OF ARKANSAS

Penn v. Gallagher

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

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.