

SUPREME COURT OF ARKANSAS

Thompson v. State

305 S.W.3d 425 (Ark. 2009) · No. CR 09-249 · Decided April 9, 2009

SUMMARY

The Supreme Court of Arkansas considered Donald Thompson's motion for a belated appeal after his notice of appeal was filed beyond the applicable deadline. Because the motion raised factual questions concerning Thompson's alleged inability to communicate with counsel while in administrative lockdown, the court remanded for an evidentiary hearing and factual findings.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Arkansas
DECIDED	April 9, 2009
DOCKET	CR 09-249
DISPOSITION	remanded
PROCEDURAL POSTURE	Thompson moved in the Supreme Court of Arkansas for permission to pursue a belated appeal after filing his notice of appeal outside the applicable deadline. The court remanded to the circuit court for an evidentiary hearing and factual findings concerning whether Thompson was unable to communicate his decision to appeal because of an administrative lockdown.
STANDARD OF REVIEW	A belated appeal is permitted upon a showing of good cause under Arkansas Rule of Appellate Procedure—Criminal 2(e). When the motion, affidavits, and record do not make attorney error or good cause plain, the matter is remanded to the trial court for factual findings.
PRECEDENTIAL VALUE	published opinion
PARTIES	Donald Thompson v. State of Arkansas

TOPICS

- appellate procedure
- post-conviction relief
- criminal procedure

PRACTICE AREAS

criminal appellate procedure

post-conviction relief

QUESTIONS PRESENTED

1. Whether Thompson established good cause for allowing a belated appeal under Arkansas Rule of Appellate Procedure–Criminal 2(e).
2. Whether unresolved factual allegations concerning Thompson's alleged administrative lockdown and inability to communicate with counsel required remand to the circuit court for an evidentiary hearing and findings of fact.

HOLDINGS

1. The Supreme Court of Arkansas could not determine from the motion, affidavits, and record whether Thompson's failure to timely appeal resulted from good cause or attorney error because the allegations raised disputed factual questions.
2. The matter was remanded to the Carroll County Circuit Court for an evidentiary hearing and findings detailing when and whether Thompson was placed in administrative lockdown and prohibited from communicating with anyone, including his attorney.

KEY QUOTATIONS

“However, where a motion seeking relief from failure to perfect an appeal is filed, and it is not plain from the motion, affidavits, and record whether there is attorney error, the clerk of this court will be ordered to accept the notice of appeal or record, and the appeal will proceed without delay.” (426)

“Because the allegations in the motion for belated appeal raise questions of fact, we remand this matter to the trial court for an evidentiary hearing on the circumstances surrounding Thompson's alleged inability to communicate with counsel.” (427)

FACTUAL BACKGROUND

The State obtained revocation of Thompson's suspended sentences following a plea agreement, and the Carroll County Circuit Court ordered him to report to the sheriff's office. Although counsel advised Thompson that an appeal had to be initiated within thirty days, Thompson did not communicate a decision to appeal before the deadline. Thompson later asserted that he had been placed on administrative lockdown and could not communicate with counsel or others when his response was due; counsel filed the notice of appeal after meeting with him on September 18, 2008.

PROCEDURAL HISTORY

The Carroll County Circuit Court revoked Thompson's suspended sentences on July 21, 2008, and entered a judgment and commitment order on July 28, 2008. Thompson filed a motion for new trial, which was denied on August 5, 2008, making September 4, 2008, the deadline for filing a notice of appeal. He filed the notice on September 18, 2008, and later sought a belated appeal in the Supreme Court of Arkansas. Because the motion

raised unresolved factual questions about his ability to communicate with counsel, the supreme court remanded for an evidentiary hearing.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The Carroll County Circuit Court must conduct an evidentiary hearing concerning the circumstances surrounding Thompson's alleged inability to communicate with counsel. It must make findings detailing when and whether Thompson was placed in administrative lockdown and prohibited from communicating with anyone, including his attorney, and provide those findings to the Supreme Court of Arkansas within forty-five days.

CASES CITED

- Garner v. State, 293 Ark. 309, 737 S.W.2d 637 (1987) (per curiam)
- McDonald v. State, 356 Ark. 106, 146 S.W.3d 883 (2004)
- Frazier v. State, 339 Ark. 173, 3 S.W.3d 334 (1999)

OPINION

PER CURIAM.

305 S.W.3d 425 (2009) 2009 Ark. 191 Donald THOMPSON, Appellant, v. STATE of Arkansas, Appellee. No. CR 09-249. Supreme Court of Arkansas. April 9, 2009. Cindy M. Baker, Berryville, for appellant. No response. PER CURIAM. Appellant Donald Thompson, by and through his attorney Cindy M. Baker, has filed a motion for belated appeal.

The State filed a petition to revoke Thompson's suspended sentence that had been entered on July 5, 2008, pursuant to a plea agreement. At a hearing on July 21, 2008, the Carroll County Circuit Court revoked Thompson's suspended sentences and ordered him to report to the Carroll County Sheriff's Office on July 28, 2008.

The judgment and commitment order reflecting the court's decision was entered on July 28, 2008. However, on July 25, 2008, *426 Thompson filed a motion for new trial, which was denied in an order entered on August 5, 2008.

The deadline for Thompson's notice of appeal thus fell on September 4, 2008. See Ark. R.App. P.-Crim. 2(a)(3). According to Thompson's motion, Baker notified Thompson that a notice of appeal would need to be filed within thirty days, but he expressed reservations about whether he would want to appeal. He further said that he would have his mother and girlfriend get estimates of how much an appeal would cost and would "have them get back to" Baker.

Baker contacted Thompson's mother and girlfriend on September 2, 2008, to ask whether Thompson wanted to pursue an appeal. The mother and girlfriend both told Baker that Thompson would be calling them that day with an answer, and they would contact Baker before the end of the day.

However, Baker never heard back from Thompson, his mother, or his girlfriend. On September 17, 2008, Thompson contacted Baker's office. Although Baker was out of the office at the time, Thompson left a message asking her to visit him in the jail the next day. Baker went to the jail to meet with Thompson on September 18, 2008. At that time, Thompson stated that he wanted to appeal and had the money to do so, but that he had been on administrative lockdown at the time his answer was due and unable to have visitors or make phone calls to anyone.

That same day, Baker filed a notice of appeal on Thompson's behalf in Carroll County Circuit Court.[1] The present motion for belated appeal was filed in this court on March 10, 2009. If a petitioner fails to timely file a notice of appeal, a belated appeal will not be allowed absent a showing by the petitioner of good cause for the failure to comply with proper procedure.

Ark. R.App. P.-Crim. 2(e); *Garner v. State*, 293 Ark. 309, 737 S.W.2d 637 (1987) (per curiam). Relief from the failure to perfect an appeal is provided as part of the appellate procedure granting the right to an appeal. *McDonald v. State*, 356 Ark. 106, 146 S.W.3d 883 (2004). Where it is plain from the motion, affidavits, and record that relief is proper under Rule 2(e), based upon error or good reason, this court will grant a belated appeal.

Id. However, where a motion seeking relief from failure to perfect an appeal is filed, and it is not plain from the motion, affidavits, and record whether there is attorney error, the clerk of this court will be ordered to accept the notice of appeal or record, and the appeal will proceed without delay. *Id.* The matter of attorney error will be remanded to the trial court to make findings of fact.

Id. (citing *Frazier v. State*, 339 Ark. 173, 3 S.W.3d 334 (1999)). Upon receipt by this court of the findings, this court will render a decision on attorney error. *Id.* In the instant motion for belated appeal, Baker asserts on Thompson's behalf that his inability to communicate his desire to appeal to his attorney constitutes good cause for granting the motion.

She does not admit fault. Because the allegations in the motion for belated appeal raise questions of fact, we remand this matter to the trial court for an evidentiary hearing on the circumstances surrounding Thompson's alleged inability to communicate with counsel.

The circuit court is directed to provide findings of fact detailing when and whether Thompson was placed in administrative lockdown and prohibited from *427 communicating with anyone, including his attorney. These findings are to be provided to this court within forty-five days. Remanded. NOTES [1] Thompson subsequently filed a motion in circuit court for an extension of time in which to lodge the record.

Although the order was purportedly granted, Thompson alleges that the court reporter failed to include a copy of that order in the record and asserts that, if this motion for belated appeal is granted, he will file a motion to correct the record.

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