

SUPREME COURT OF ARKANSAS

Wann v. State, 369 Ark. 426

255 S.W.3d 473 (2007) · No. CR 06-1423 · Decided April 12, 2007

SUMMARY

The Supreme Court of Arkansas granted Robert L. Wann's motion to file a belated return and granted his request for a belated appeal from an order revoking his suspended sentence. The court found that appointed counsel was responsible for failing to perfect the appeal, referred the matter to the Committee on Professional Conduct, and granted counsel's motion to withdraw. Substitute counsel was appointed and given 35 days to file the abstract and brief.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Arkansas
DECIDED	April 12, 2007
DOCKET	CR 06-1423
DISPOSITION	other
PROCEDURAL POSTURE	Wann sought a belated return of the circuit court's findings and permission to pursue a belated criminal appeal after appointed counsel failed to perfect the appeal within the required period. Counsel also moved to withdraw.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion
PARTIES	Robert L. Wann v. State of Arkansas

TOPICS

- appellate procedure
- criminal procedure
- post-conviction relief

PRACTICE AREAS

- criminal appellate procedure
- post-conviction and belated appeals
- appointed counsel

QUESTIONS PRESENTED

1. Whether Wann should be permitted to file a belated return of the circuit court's findings after the circuit court's delayed submission.
2. Whether Wann was entitled to a belated appeal when appointed counsel admitted fault for failing to perfect the appeal.
3. Whether full-time, state-salaried public defender John Joplin could withdraw from the appeal under the changed Arkansas compensation statute.

HOLDINGS

1. The court granted Wann's motion to file the circuit court's findings belatedly.
2. A belated appeal was warranted because counsel candidly admitted fault for failing to perfect Wann's appeal.
3. An attorney who represents a criminal defendant remains obligated to perfect the appeal and lodge the record until relieved by the appropriate court, and may not abandon the appeal without being relieved.
4. Joplin was permitted to withdraw because the law had changed to authorize compensation for qualifying appellate work by full-time public defenders, and Joplin's motion stated that he had a full-time, state-funded secretary.

KEY QUOTATIONS

“Where an appeal is not timely perfected, either the party or attorney filing the appeal is at fault, or there is good reason that the appeal was not timely perfected.” (474)

“Under no circumstance may an attorney who had not been relieved by the court abandon the appeal.” (474)

FACTUAL BACKGROUND

The circuit court found that Wann violated the conditions of his suspended sentence and sentenced him to three years in the Arkansas Department of Corrections plus an additional three-year suspended imposition of sentence. Wann timely asked his attorneys to file an appeal, but the appeal was not perfected. His attorney, John Joplin, admitted responsibility for the failure and later sought permission to withdraw.

PROCEDURAL HISTORY

The circuit court revoked Wann's suspended imposition of sentence and entered a judgment and commitment order on April 24, 2006. The Arkansas Supreme Court remanded for findings concerning whether Wann had timely instructed counsel to appeal. After a delayed hearing, the circuit court found that Wann had requested an appeal within thirty days. The Supreme Court granted the belated return and belated appeal, permitted counsel to withdraw, substituted David L. Dunagin, and allowed him thirty-five days to file the abstract and brief.

DISPOSITION

other

REMAND INSTRUCTIONS

David L. Dunagin was substituted as counsel and was granted thirty-five days from the opinion to file Wann's abstract and brief. A copy of the opinion was forwarded to the Committee on Professional Conduct.

CASES CITED

- McDonald v. State, 356 Ark. 106, 146 S.W.3d 883 (2004)
- Hammon v. State, 347 Ark. 267, 65 S.W.3d 853 (2002)
- Rogers v. State, 353 Ark. 359, 107 S.W.3d 166 (2003) (per curiam)
- Rushing v. State, 340 Ark. 84, 8 S.W.3d 489 (2000)

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