

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)

OPINION

PER CURIAM.

255 S.W.3d 473 (2007) Robert L. WANN, Appellant, v. STATE of Arkansas, Appellee. No. CR 06-1423. Supreme Court of Arkansas. April 12, 2007. John Joplin, Fort Smith, for appellant. No response. PER CURIAM. The Public Defender of the 12th Judicial District was appointed to represent Robert L. Wann on a petition to revoke a suspended imposition of sentence.

The circuit court concluded that Wann violated the terms and conditions of his suspended sentence, and he was sentenced to three years in the Arkansas Department of Corrections with an additional suspended imposition of sentence of three years.

The circuit court entered a judgment and commitment order on April 24, 2006. On January 11, 2007, we remanded this case, directing the circuit court to settle the record as to whether Wann advised his trial counsel, Mr. John Joplin and Ms. Rita Howard, that he wished to appeal within 30 days from the date the judgment was entered. See Ark. R.App. P. Crim. 2(e) (2006).

The circuit court was untimely in tendering the findings due to inclement weather on the date of the scheduled hearing, January 31, 2007. The circuit court rescheduled the hearing and conducted it on February 16, 2007.

The circuit court, thereafter, entered an order, almost a month later, on March 15, 2007, finding that Wann requested that his counsel file an appeal within 30 days. Wann now asks that we grant a belated return of the circuit court's finding.

We grant Wann's *474 motion to file the belated return and grant his request for a belated appeal. 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).

Under Ark. R.App. P. Crim. 16(a), once an attorney represents a defendant, the attorney is obligated to continue representing the defendant until relieved by the appropriate court. See

Hammon v. State, 347 Ark. 267, 65 S.W.3d 853 (2002). There is no indication that Mr. Joplin or Ms. Howard was relieved by the trial court.

Thus, Mr. Joplin was obligated to perfect the appeal and lodge the record in the appellate court. Under no circumstance may an attorney who had not been relieved by the court abandon the appeal. See Rogers v. State, 353 Ark. 359, 107 S.W.3d 166 (2003) (per curiam).

In this case, Mr. Joplin admits responsibility for failing to perfect Wann's appeal, and he subsequently seeks to withdraw. This court clarified its treatment of motions for rule on the clerk and motions for belated appeals in McDonald v. State, 356 Ark. 106, 146 S.W.3d 883 (2004). There we said that there are only two possible reasons for an appeal not being timely perfected: either the party or attorney filing the appeal is at fault, or there is "good reason."

McDonald v. State, 356 Ark. at 116, 146 S.W.3d at 891. We explained: 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.

The party or attorney filing the appeal is therefore faced with two options. First, where the party or attorney filing the appeal is at fault, fault should be admitted by affidavit filed with the motion or in the motion itself. There is no advantage in declining to admit fault where fault exists.

Second, where the party or attorney believes that there is good reason the appeal was not perfected, the case for good reason can be made in the motion, and this court will decide whether good reason is present. *Id.*, 146 S.W.3d at 891 (footnote omitted). While this court no longer requires an affidavit admitting fault before we will consider the motion, an attorney should candidly admit fault where he has erred and is responsible for the failure to perfect the appeal.

See *id.* In accordance with McDonald v. State, *supra*, Mr. Joplin has candidly admitted fault. The motion is, therefore, granted. A copy of this opinion will be forwarded to the Committee on Professional Conduct. Mr. Joplin, a full-time, state-salaried public defender, now asks to be relieved as counsel for appellant in this criminal appeal, based upon the case of Rushing v. State, 340 Ark.

84, 8 S.W.3d 489 (2000) (holding that full-time, state-salaried public defenders were ineligible for compensation for their work on appeal) and Ark.Code Ann. § 16-87-201, et seq. (1998). Since the court's decision in Rushing, the law was changed by the General Assembly. Act 1370 of 2001 provides in part: "[P]ersons employed as full-time public defenders, who are not provided a state-funded secretary, may also seek compensation for appellate work from the Arkansas Supreme Court or the Arkansas Court of Appeals."

That provision is now codified as Ark.Code Ann. § 19-4-1604(b)(2)(B) (Supp.2001). Mr. Joplin's motion states that he is provided with a full-time, state-funded secretary. Accordingly, we grant his

motion to withdraw as attorney. Mr. David L. Dunagin will be substituted as attorney for *475 Wann in this matter.

We grant Mr. Dunagin 35 days from this opinion to file his abstract and brief. Motions granted.