

Cite as 2009 Ark. 625

SUPREME COURT OF ARKANSAS

No. CR 09-999

RAYLEE EARL JACKSON
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered December 10, 2009

PRO SE MOTION FOR BELATED
APPEAL OF JUDGMENT OF
CONVICTION [CIRCUIT COURT OF
PULASKI COUNTY, CR 2007-696,
HON. MARION HUMPHREY, JUDGE]

MOTION DENIED.

PER CURIAM

Petitioner Raylee Earl Jackson, who had been charged with capital murder, was found guilty by a jury of murder in the first degree and sentenced to 480 months' imprisonment. Judgment was entered on March 13, 2008. On March 25, 2008, petitioner filed with the circuit court an unverified "Notice of Intention Not to Appeal My Judgment, Conviction, or Sentence," averring that he had discussed the matter with his attorney and decided not to appeal.

On September 9, 2009, petitioner filed the instant motion seeking leave to proceed with a belated appeal of the judgment pursuant to Arkansas Rule of Appellate Procedure—Criminal 2(e), which permits a belated appeal in a criminal case in some instances. Petitioner contends that he discussed his desire to appeal with his appointed attorney, Bret Qualls, and was advised by counsel that he could be sentenced to a greater sentence if he was retried, that all hope was gone, and that he had no chance of prevailing on appeal. He contends that counsel did not

Cite as 2009 Ark. 625

advise him that he had a right to counsel on appeal or that he could proceed as an indigent on appeal.

It is the practice of this court when a pro se motion for belated appeal is filed in which the petitioner contends that he made a request to appeal, and the record does not contain an order relieving trial counsel, to request an affidavit from the trial attorney in response to the allegations in the motion. There is no order relieving Mr. Qualls in the record filed in this case. In his affidavit, Mr. Qualls avows that petitioner's appellate rights were explained to him and that he chose not appeal and memorialized the decision in the Notice of Intention Not to Appeal that was filed with the circuit clerk on March 25, 2008.

Arkansas Rule of Appellate Procedure—Criminal 16 provides in pertinent part that trial counsel, whether retained or court appointed, *shall* continue to represent a convicted defendant throughout any appeal, unless permitted by the trial court or the appellate court to withdraw in the interest of justice or for other sufficient cause. We have held, however, that a defendant may waive his right to appeal by his failure to inform counsel of his desire to appeal within the thirty-day period allowed for filing a notice of appeal under Arkansas Rule of Appellate Procedure--Criminal 2(a)(4). *Bankston v. State*, 354 Ark. 473, 123 S.W.3d 146 (2003) (per curiam).

While petitioner's signature on the March 25, 2008, notice was not verified, he does not contend that he did not sign the notice. He also does not state that he informed counsel within the time to file a timely notice of appeal that he had changed his mind and wanted to appeal. As stated, failure to inform counsel of the desire to appeal within the thirty-day period to file a

Cite as 2009 Ark. 625

notice of appeal is tantamount to waiving the right to appeal.

Petitioner indicates that he was strongly discouraged from appealing, but this in itself does not demonstrate that he was not properly advised by counsel of his right to appeal. In short, the gravamen of petitioner's motion is that he regrets the decision he made to forego an appeal and wishes now to be permitted to revisit his decision. He has, however, failed to show that the decision was not freely and voluntarily made with competent advice of counsel. Accordingly, the motion for belated appeal is denied.

Motion denied.