Cite as 2010 Ark. App. 527

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR09-694

	Opinion Delivered June 23, 2010
	APPEAL FROM THE MILLER COUNTY CIRCUIT COURT [CR-2009-67-2, CR-2009-57-2, CR-2009-415-2]
DEMARCUS COOKS APPELLANT	
V.	HONORABLE JAMES SCOTT HUDSON, JR., JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED; COUNSEL'S MOTION TO BE RELIEVED GRANTED

DAVID M. GLOVER, Judge

Appellant, Demarcus Cooks, pleaded guilty to three counts of failure to appear and two counts of second-degree escape on February 18, 2009, but requested a jury be empaneled for sentencing. After hearing evidence on February 23 and 24, 2009, the jury sentenced Cooks to a total of 100 years' imprisonment and recommended that the sentences be served consecutively, which the trial court accepted.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(k) of the Arkansas Rules of the Supreme Court and Court of Appeals, appellant's counsel has filed a motion to withdraw on the grounds that the appeal is without merit. Counsel's motion was accompanied by a brief referring to everything in the record that might arguably support an

appeal, including a list of all rulings adverse to appellant made by the trial court on all objections, motions and requests made by either party with an explanation as to why each adverse ruling is not a meritorious ground for reversal. The clerk of this court furnished appellant with a copy of his counsel's brief and notified him of his right to file *pro se* points; appellant has filed no points.

There were two rulings adverse to Cooks. The first adverse ruling occurred in the earlier February 18 hearing after Cooks pleaded guilty. When defense counsel orally moved for a change of venue due to pretrial publicity, the trial court held that the motion was premature. The trial court then stated that if it had to rule that day, it would deny without prejudice for appellant to file a motion for a change of venue in conformity with the statute. At this time, the trial court urged counsel to prepare general questions for voir dire of the jury panel to gauge whether any panel members had heard about the jail escapes in the newspapers, on the radio, or on television.

At the February 23–24 sentencing hearing, during voir dire, Cooks's counsel asked the jury panel if anyone had read about Cooks's case. One juror stated that he was familiar with the case; that his familiarity would not influence him in determining the range of punishment; that it had not tainted his opinion of Cooks in any way; and that he had not formed an opinion regarding the range of punishment.

The standard of review for denial of a motion for change of venue is whether there was an abuse of discretion by the trial court. *Taylor v. State*, 334 Ark. 339, 974 S.W.2d 454

(1998). Arkansas Code Annotated section 16-88-204(a)(1) (Repl. 2005), recites the procedure for requesting a change of venue:

> The application of the defendant for an order of removal shall be by petition setting forth the facts on account of which the removal is requested. The truth of the allegations in the petition shall be supported by the affidavits of two (2) credible persons who are qualified electors, actual residents of the county, and not related to the defendant in any way.

Cooks did not invoke the proper procedure to request a change of venue by filing a petition and supporting affidavits from two qualified resident electors who were not related to Cooks; therefore, the trial court did not err in denying Cooks's motion for a change in venue.

Even so, a "bare allegation of local prejudice is not enough to warrant a trial court ordering a change of venue." *Hutcherson v. State*, 262 Ark. 535, 541, 558 S.W.2d 156, 159 (1977). Here, during voir dire, Cooks's counsel was allowed to adequately question the one juror who disclosed he had seen pretrial publicity of Cooks's case. Our supreme court, in *Taylor*, *supra*, 334 Ark. at 345, 974 S.W.2d at 458 (citing *Rankin v. State*, 329 Ark. 379, 948 S.W.2d 397 (1997)), held:

> [T]here can be no error in the denial of a change of venue if an examination of the jury selection shows that an impartial jury was selected and that each juror stated he or she could give the defendant a fair trial and follow the instructions of the court. The defendant is not entitled to jurors who were totally ignorant of the facts surrounding the case, as long as they can set aside any impression they have found and render a verdict solely on the evidence at trial.

The sole juror who noted that he was familiar with the case also stated that he had not formed an opinion and his knowledge would not influence his decision in determining Cooks's

sentence. Therefore, even if Cooks could overcome the procedural defects, the trial court did not abuse its discretion in denying the motion for a change in venue.

The second adverse ruling occurred during the sentencing hearing, when Cooks's counsel objected to State's Exhibit Number 2 (certified court records concerning Cooks's failure to appear) on the basis that the documents were cumulative because Cooks had already pleaded guilty to the offenses, and that the documents served no probative value. The trial court ruled that the State was entitled to put on evidence that was probative of a higher-end punishment range rather than a lower-end punishment range, stating that the length of time out of legal custody was probative on that matter and was not overly cumulative. The State agreed to redact the records so that the jury would only be apprised of Cooks's failure to appear on three occasions but not the underlying offenses for which he failed to appear; Cooks's counsel agreed to the redaction. Therefore, there was no longer an adverse ruling.

From a review of the record and the brief presented to this court, appellant's counsel has complied with the requirements of Rule 4-3(k) of the Arkansas Rules of the Supreme Court and the Court of Appeals. Counsel's motion to be relieved is granted and appellant's conviction is affirmed.

Affirmed; counsel's motion to be relieved is granted.

HART and HENRY, JJ., agree.