

Cite as 2019 Ark. 90  
**SUPREME COURT OF ARKANSAS**  
No. CR-19-10

QUAYVON PEOPLES

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered: April 4, 2019

MOTION TO LODGE APPEAL AND  
MOTION FOR PERMISSION TO FILE  
AN AMENDED BRIEF

[MILLER COUNTY CIRCUIT COURT  
NO. 46-CR-17-4]

MOTION TO LODGE APPEAL  
TREATED AS A MOTION FOR RULE  
ON CLERK AND GRANTED; MOTION  
FOR PERMISSION TO FILE AN  
AMENDED BRIEF DENIED.

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ROBIN F. WYNNE, Associate Justice

Quayvon Peoples has filed a motion to lodge an appeal from a judgment entered on October 12, 2017, which sentenced him to 360 months' imprisonment based on his convictions on two counts of rape. Peoples has also filed a motion for permission to file an amended brief. The motion to lodge appeal is treated as a motion for rule on clerk and granted. Because no briefing schedule for the appeal has been set, the motion for permission to file an amended brief is denied.

Mr. Peoples's trial counsel, Bart C. Craytor, filed a timely notice of appeal from the judgment on November 8, 2017. In accordance with Rule 4(c)(2) of the Arkansas Rules of Appellate Procedure-Criminal (2017), the record was due to be lodged with the Clerk of

the Arkansas Supreme Court and Court of Appeals on or before February 6, 2018. Mr. Craytor never lodged the record, nor does it appear he took any action to perfect the appeal.

Rule 16 of the Rules of Appellate Procedure–Criminal (2017) provides 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 an appellate court to withdraw. Once the notice of appeal is filed with the circuit clerk, only the appellate court can relieve counsel of the obligation to proceed with the appeal. Ark. Sup. Ct. R. 4-3(j)(1) (2017). A convicted defendant can waive his right to appeal by not informing counsel that he desires to appeal, but the timely filing of a notice of appeal in the instant case clearly demonstrates that the petitioner here did not waive his appeal right. *Franklin v. State*, 317 Ark. 42, 875 S.W.2d 836 (1994). The direct appeal of a conviction is a matter of right, and a criminal defendant cannot be denied his first appeal because counsel has failed to follow mandatory appellate rules. See *Reagan v. State*, 316 Ark. 511, 872 S.W.2d 396 (1994) (citing *Evitts v. Lucey*, 469 U.S. 387 (1985)). Under no circumstances may an attorney who has not been relieved abandon an appeal. *Holland v. State*, 358 Ark. 366, 190 S.W.3d 904 (2004).

Accordingly, Mr. Craytor remains Mr. Peoples's counsel of record until such time as he may be relieved of that duty by an appellate court of this state. Mr. Peoples tendered a partial record in connection with his motions. The clerk is directed to file the partial

record. Mr. Craytor is ordered to file the remainder of the record on appeal within ten days of this order. Once the record on appeal has been filed, the clerk is directed to set a briefing schedule.

Motion to lodge appeal treated as a motion for rule on clerk and granted; motion for permission to file an amended brief denied.