

Cite as 2009 Ark. 438

ARKANSAS SUPREME COURT

No. CR 09-374

TYWAN WINSTON
Appellant

v.

STATE OF ARKANSAS
Appellee**Opinion Delivered** September 24, 2009APPELLANT'S PRO SE MOTION FOR
PERMISSION TO FILE PRO SE BRIEF
AND APPELLEE'S MOTION FOR
STAY OF BRIEF TIME [CIRCUIT
COURT OF PULASKI COUNTY, CR
2006-3399, HON. WILLARD
PROCTOR, JR., JUDGE]APPELLANT'S MOTION DENIED;
APPELLEE'S MOTION GRANTED.**PER CURIAM**

In 2007, a jury found appellant Tywan Winston guilty of capital murder and sentenced him to life imprisonment without parole. This court affirmed the judgment. *Winston v. State*, 372 Ark. 19, 269 S.W.3d 809 (2007). Appellant timely filed in the trial court a pro se notice of appeal of an order denying postconviction relief. The appeal was lodged in this court, with our docket reflecting that appellant is represented by counsel, Mr. Mark Alan Jesse. Mr. Jesse filed appellant's brief. Appellant later tendered a pro se brief that was returned to him,¹ and he has now filed this motion in which he requests permission to file a pro se brief.

This court will not permit an appellant to compete with his attorney to be heard in an appeal. *Brewer v. State*, 371 Ark. 532, 268 S.W.3d 332 (2007) (per curiam). If appellant is represented by counsel, he may not submit his own brief in competition with his attorney's. Appellant contends

¹ Appellant's pro se brief was returned and not held because it was not signed by appellant.

Cite as 2009 Ark. 438

that he terminated his representation by Mr. Jesse, and that the brief that Mr. Jesse filed was submitted without his consent. The record, however, indicates that Mr. Jesse was attorney-of-record below and does not reflect that Mr. Jesse was relieved as counsel.

Under Arkansas Rule of Appellate Procedure–Criminal 16(a), once an attorney represents a defendant in a criminal matter, the attorney is obligated to continue representing the defendant until relieved by the appropriate court. *Wann v. State*, 369 Ark. 426, 255 S.W.3d 473 (2007) (per curiam). Under no circumstances may an attorney who has not been relieved by the court abandon an appeal. *Id.* Further, counsel representing a client whose petition under Arkansas Rule of Criminal Procedure 37.1 is denied must continue to represent that client on appeal until relieved. Ark. R. Crim. P. 37.3(b). Mr. Jesse was clearly still obligated to represent appellant when appellant’s brief was filed.

We do not treat appellant’s motion as one to relieve Mr. Jesse so that he may file a pro se brief because he has not submitted an appropriate affidavit. *See* Ark. Sup. Ct. R. 4-1(c). Nor do we treat the motion as one to supplement the brief because appellant does not allege that the brief is in any particular way deficient; he only avers that his own brief has merit. An appellant is not permitted to supplement a brief filed by counsel unless he clearly shows that counsel’s brief is lacking. *Gidron v. State*, 312 Ark. 517, 850 S.W.2d 331 (1993) (per curiam) (citing *Wade v. State*, 288 Ark. 94, 702 S.W.2d 28 (1986) (per curiam)). Accordingly, we deny the motion.

Appellee State, in addition to its response, has filed a motion that requests an extension of fifteen days in which to file its own brief addressing the issues in the brief filed by counsel. We grant the motion. Appellee’s brief is due here no later than fifteen days from the date of this

Cite as 2009 Ark. 438

opinion.

Appellant's motion denied; appellee's motion granted.