

# ARKANSAS SUPREME COURT

No. CR 07-623

RONALD JAY CAMPBELL  
Appellant

v.

STATE OF ARKANSAS  
Appellee

Opinion Delivered      October 4, 2007

PRO SE MOTION FOR  
APPOINTMENT OF COUNSEL AND  
FOR APPEAL BOND [APPEAL FROM  
THE CIRCUIT COURT OF  
LONOKE COUNTY, CR 2006-494,  
HON. JOHN W. COLE, JUDGE]

MOTION GRANTED IN PART AND  
MOOT IN PART.

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## PER CURIAM

A judgment and commitment order entered April 24, 2007, indicates that a jury convicted appellant Ronald Jay Campbell of twenty-eight charges, as follows: one count of first-degree engaging in a continuing gang organization or enterprise; one count of manufacturing a controlled substance, methamphetamine; three counts of hindering apprehension or prosecution; one count of filing a false report of a crime; nine counts of obtaining a controlled substance by fraud; two counts of theft of property valued at \$2500 or more; two counts of theft of property valued at \$500 or less; one count of theft of services of \$500 or less; one count of theft by receiving on property valued at less than \$2500 but greater than \$500; six counts of residential burglary; one count of commercial burglary. Appellant was sentenced to an aggregate term of 480 months' imprisonment in the Arkansas Department of Correction. Following entry of the judgment, the trial court entered an order on May 1, 2007, that granted appellant's motion to be declared indigent and that relieved trial counsel. On the same day, appellant timely filed in the trial court a pro se notice of appeal. A partial

record has been lodged, and now before this court is appellant's pro se motion requesting appointment of counsel and challenging his denial of bond on appeal by the trial court.

In his motion, appellant first raises arguments concerning the denial of an appeal bond by the trial court. However, he also requests that, should counsel be appointed for this appeal, counsel be allowed to raise arguments on that issue. As we grant appellant's request for counsel, and counsel may proceed with any appropriate challenge to appellant's denial of bond on appeal, those issues are moot to the extent raised at this time and we need not now address them.

The order relieving trial counsel, Patrick J. Benca, did not appoint other counsel to represent appellant. Instead, it indicated that appellate counsel would be appointed in the thirty days following the entry of the order on May 1, 2007. An appellant who desires to appeal, however, must file notice of appeal within the thirty-day period following entry of the judgment allowed under Ark. R. App. P.–Civ. 4(a), and applied through Ark. R. App. P.–Crim. 4(a). Appellant filed a notice of appeal within that period, that is within thirty days following entry of the judgment on April 24, 2007, but did so pro se, as counsel was relieved by the court. After the notice of appeal was filed, the trial court no longer had jurisdiction to appoint new counsel. *Barr v. State*, 333 Ark. 576, 970 S.W.2d 243 (1998) (per curiam).

The trial court's order violated Ark. R. Crim. P. 16(b), which requires that new counsel be appointed promptly by the court exercising jurisdiction over the matter of counsel's withdrawal. The direct appeal of a conviction is a matter of right and an indigent criminal defendant is entitled to representation by counsel on direct appeal of a judgment of conviction. *Wrenn v. State*, 355 Ark. 558, 141 S.W.3d 362 (2004) (per curiam). As we noted in *Wrenn*, the failure of a trial court to appoint other counsel when it relieves the trial attorney is unacceptable. Rule 16(b) imposes a duty

on the court that must be complied with to ensure that the convicted defendant is not denied his right to a first appeal. *Id.* A failure to appoint new counsel at the time trial counsel is relieved impermissibly curtails the defendant's right to proceed with a first appeal. *Evans v. State*, 356 Ark. 366, 151 S.W.3d 314 (2004) (per curiam).

Mr. Benca is appointed to represent appellant. As the attorney who represented appellant at trial, Mr. Benca is in a unique position to assess the merits of an appeal. No fact or circumstance has been brought to our attention that warrants appointing another attorney. As noted, only a partial record has been lodged. While the notice of appeal indicates that the entire record was ordered, it is not clear whether a proper request for an extension of time to lodge the record has been filed. Counsel is directed to file within fifteen days from the date of this opinion a motion for writ of certiorari to bring up the record, in the event that proper procedure has not been followed.

Motion granted in part and moot in part.