# ARKANSAS SUPREME COURT

**No.** CR 07-141

**Opinion Delivered** June 19, 2008

SHEILA M. SMITH
Appellant

v.

STATE OF ARKANSAS
Appellee

APPEAL FROM THE CIRCUIT COURT OF PULASKI COUNTY, CR 2006-3293, HON. WILLARD PROCTOR, JR., JUDGE

APPEAL DISMISSED.

**PER CURIAM**

Appellant Sheila M. Smith entered a plea of guilty to two criminal charges and subsequently filed a motion for new trial. Now before us is appellant's appeal. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Ark. Sup. Ct. R. 4-3(j)(1), appellant's counsel submitted a no-merit brief asserting that there is no non-frivolous argument to be made in support of an appeal. Appellant declined to file pro se points for reversal.

In 2006, appellant appealed de novo to circuit court from a judgment entered against her in Little Rock District Court. In the circuit court, appellant had an attorney appointed to represent her. She entered a plea of guilty to failure to appear and to attempt to influence a public official and was sentenced to twelve months' incarceration on each charge to be served concurrently. The judgment was entered on September 21, 2006.

Appellant then timely filed a pro se motion for a new trial in which she claimed that counsel was ineffective. Therein, she stated that she intended to plead guilty only to one charge but not guilty to another charge. She further claimed that trial counsel was ineffective for wrongly

informing her that she could only enter the same plea to all charges, i.e., that she was prohibited from entering a plea of guilty to one charge and a plea of not guilty to another charge. On October 24, 2006, at the hearing on the motion for new trial, the circuit court orally denied the motion but did not reduce the denial to writing.

Appellant filed a pro se notice of appeal on November 13, 2006. She stated that she intended to appeal from her guilty pleas, from the order that appointed counsel and from the denial of the motion for new trial. Now represented by a different attorney, appellant has lodged an appeal here. For the reasons set forth below, the appeal is dismissed.

We first address appellant's guilty pleas. The notice of appeal designated that she was appealing in part from the judgment of conviction based on appellant's guilty plea to both pending charges, although she objected only to entry of one of the pleas. Under Ark. R. App. P.–Crim. 1, there is no right to appeal a guilty plea. The primary exception is a conditional plea of guilty premised on an appeal of the denial of a suppression motion pursuant to Ark. R. Crim. P. 24.3. *Seibs v. State*, 357 Ark. 331, 166 S.W.3d 16 (2004). Here, appellant does not contend, and the record does not reflect, that her pleas of guilty were conditional.

Two other exceptions to the general rule, as set out in *Seibs, supra,* and *Bradford v. State*, 351 Ark. 394, 94 S.W.3d 904 (2003), are: (1) when there is a challenge to testimony or evidence presented before a jury in a sentencing hearing separate from the plea itself; (2) when the appeal is from a posttrial motion challenging the validity and legality of the sentence itself. Neither of these exceptions apply to the case at hand. Therefore, appellant is precluded from pursuing an appeal from her pleas of guilty, and the portion of her appeal from the judgment is dismissed.

We turn next to the order that appointed counsel in circuit court. As to an appeal from the

order, appellant made no objection below to the appointment. To preserve an argument for appeal, there must be an objection in the trial court that is sufficient to apprise the court of the particular error alleged and to preserve the objection for appeal. *Standridge v. State*, 357 Ark. 105, 161 S.W.3d 815 (2004). Because appellant did not object to the entry of the order in the trial court, she cannot raise it for the first time on appeal. *Id*. The appeal is dismissed as to the order appointing counsel.

Finally, we consider appellant's motion for new trial that raised a claim of ineffective assistance of counsel. Claims of ineffectiveness can be raised on direct appeal if (1) the issue was first raised during trial or in a motion for new trial, and (2) the facts and circumstances were fully developed either during trial or during other hearings conducted by the trial court. *Rackley v. State*, 371 Ark. 438, ___ S.W.3d ___ (2007) (citing *Ratchford v. State*, 357 Ark. 27, 159 S.W.3d 304 (2004)). However, we need not reach the issue of ineffective assistance of counsel as this court has not been conferred jurisdiction over the trial court's denial of the motion for new trial.

Pursuant to Arkansas Supreme Court Administrative Order 2(b)(2), an oral order announced from the bench does not become effective until reduced to writing and filed of record. *McGhee v. Arkansas Bd. of Collection Agencies*, 368 Ark. 60, 243 S.W.3d 278 (2006). In appeals, Ark. R. App. P.–Civ. 4(d) requires that appeals must be based on orders that comport with Admin. Ord. 2(b)(2). This rule is made applicable to criminal cases by Ark. R. App. P.–Crim. 4(a). Also, Ark. R. App. P.–Crim. 2(a) does not provide for filing a notice of appeal from a decision rendered orally at a hearing.[1]

All litigants, including those who proceed pro se, must bear responsibility for conforming

[1]Under Ark. R. App. P.–Crim. 2(a)(1)–(4), an appeal may be taken from: the entry of a judgment; the entry of an order that denied a posttrial motion under Ark. R. Crim. P. 33.3; the date a posttrial motion is deemed denied; the entry of an order that denied a petition under Ark. R. Crim. P. 37.1.

to the rules of procedure or demonstrating a good cause for not doing so. *Bragg v. State*, 297 Ark. 348, 760 S.W.2d 878 (1988). Appellant's pro se notice of appeal indicated that she was appealing from the trial court's oral denial of the motion for new trial. Based on the rules of appellate procedure, appellant was foreclosed from perfecting an appeal from an order rendered from the bench but not reduced to writing. Ark. R. App. P.–Civ. 4(d); Ark. R. App. P.–Crim. 2(a); *see also National Home Centers, Inc. v. Coleman*, 370 Ark. 119, ___ S.W.3d ___ (2007) (explaining the rationale behind requiring an order be written after an oral ruling).

Furthermore, appellant could have obtained a written order from the trial court to be timely entered, but failed to do so. It is an appellant's obligation to obtain a ruling at trial in order to properly preserve an issue for review. *See Beshears v. State*, 340 Ark. 70, 8 S.W.3d 32 (2000) (citing *Oliver v. State*, 323 Ark. 743, 918 S.W.2d 690 (1996)). Here, appellant failed to secure the entry of a written order denying the motion for new trial from which she would have been able to seek an appeal.

As to whether appellant's motion for new trial can be considered as having been deemed denied pursuant to Ark. R. Crim. P. 33.3(c) and Ark. R. App. P.–Crim. 2(b)(1), we conclude that it cannot. We have previously held that an appeal of a claim for ineffective assistance of counsel cannot be taken from a deemed-denied date, as the deemed-denied date is not a sufficient order from which to appeal. *Maxwell v. State*, 359 Ark. 335, 197 S.W.3d 442 (2004). Typically under that scenario, no hearing would be held on the ineffectiveness claim and facts would not have been developed because the trial court did not consider the claim. Here, there was a hearing held in which facts were developed pertaining to the ineffective-assistance claim, and the trial court made a finding that there was no basis for appellant's claim of ineffectiveness. Therefore, there was a ruling and

the motion for new trial was not deemed denied.

In addition to the fact that appellant did not have a final written order from which to seek an appeal, whether an appellant filed an effective notice of appeal is always an issue before the appellate court. *Bilyeu v. State*, 342 Ark. 271, 27 S.W.3d 400 (2000). The filing of a notice of appeal is jurisdictional. *Brady v. Alken*, 273 Ark. 147, 617 S.W.2d 358 (1981). Absent an effective notice of appeal, this court lacks jurisdiction to consider the appeal and must dismiss it. *See Pannell v. State*, 320 Ark. 250, 895 S.W.2d 911 (1995).

Under Ark. R. App. P.–Crim. 2(a)(4), a notice of appeal must identify the judgment or order from which an appeal is being taken. In this instance, appellant's notice identified the oral denial of the motion for new trial as the basis for the appeal. As the oral denial of the motion was not a valid order upon which to take an appeal, appellant's notice of appeal was defective. On this ground, jurisdiction to consider that portion of the appeal would not be vested in the court and the complete appeal must be dismissed. *Pannell*, *supra*.

Appeal dismissed.