

ARKANSAS SUPREME COURT

No. CR11-1267

MARCUS W. FIELDS

APPELLANT

v.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered March 14, 2013

PRO SE APPELLANT'S MOTION TO FILE A BELATED PETITION FOR REHEARING [SEBASTIAN COUNTY CIRCUIT COURT, FORT SMITH DISTRICT, CR11-29, HON. J. MICHAEL FITZHUGH, JUDGE]

MOTION DENIED.

PER CURIAM

On September 27, 2012, this court affirmed the judgment and sentence in *Fields v. State*, 2012 Ark. 353. The mandate was issued in the case on October 16, 2012. Approximately two months later, on December 14, 2012, appellant Fields filed the instant pro se motion, seeking leave to file a pro se petition for rehearing. In the motion, he questions the admissibility of certain evidence and the sufficiency of the evidence to sustain the judgment, and he contends that he was not afforded effective assistance of counsel at trial.

There is ample precedent to deny a pro se motion for leave to file a belated pro se petition for rehearing. Petitioner was represented by counsel on appeal. This court will not permit an appellant to compete with his attorney to be heard in an appeal. *Jarrett v. State*, 2009 Ark. 586 (per curiam); *Winston v. State*, 2009 Ark. 439 (per curiam); *Brewer v. State*, 371 Ark. 532, 268 S.W.3d 332 (2007) (per curiam); *Franklin v. State*, 327 Ark. 537, 939 S.W.2d 836 (1997) (per curiam). The right to counsel does not provide the right for an appellant to substitute his or her judgment for counsel's professional judgment. *Jarrett*, 2009 Ark. 586.

Here, petitioner was represented by counsel who did not elect to file a petition for rehearing, but, even if counsel had filed the instant petition, there is no good cause stated to grant rehearing. Pursuant to Arkansas Supreme Court Rule 2-3(g) (2012), a petition for rehearing should call attention to specific errors of law or fact that the opinion is thought to contain. Here, appellant simply raises arguments that he believes warranted reversal of the judgment without making any claim that the opinion contained errors in any respect.

With respect to appellant's contention that he was not afforded effective assistance of counsel at trial, a claim of ineffective assistance of counsel is not cognizable on direct appeal unless the issue was raised at trial. *See State v. Robinson*, 2011 Ark. 90 (citing *Missildine v. State*, 314 Ark. 500, 863 S.W.2d 813 (1993)). After trial, appellant filed a pro se motion to overturn the verdict in which he argued that his attorney had not provided competent representation. The motion was denied on the ground that appellant had failed to substantiate the claim. The issue was not raised on direct appeal, and appellant has not shown in this motion that he should be permitted to raise the issue for the first time in a belated petition for rehearing. This court expects a case to be argued fully in the original briefs in the appeal, and new arguments not presented in the original briefs may not be raised in the petition for rehearing. *MacKool v. State*, 2012 Ark. 341 (per curiam); *see also Pannell v. State*, 320 Ark. 390, 897 S.W.2d 552 (1995) (per curiam); Ark. Sup. Ct. R. 2-3(g).

Motion denied.

Marcus W. Fields, pro se appellant.

No response.