

SUPREME COURT OF ARKANSAS

No. CR 12-941

BERNARD KINDALL

PETITIONER

V.

PULASKI COUNTY CIRCUIT COURT,
FIRST DIVISION

RESPONDENT

Opinion Delivered January 31, 2013

PRO SE PETITION FOR WRIT OF
PROHIBITION OR IN THE
ALTERNATIVE CERTIORARI
[PULASKI COUNTY CIRCUIT COURT,
CR 09-3167, HON. JAMES LEON
JOHNSON, JUDGE]

PETITION DENIED.

PER CURIAM

The prosecuting attorney in Pulaski County commenced criminal proceedings against petitioner Bernard Kindall by filing an information charging him with second-degree sexual assault. Petitioner filed a pro se motion to dismiss the charge on the basis of a speedy-trial violation, and the circuit court denied the motion. Petitioner then filed the petition before this court, in which he seeks to halt the proceedings on the basis that the time period in which to bring him to trial had expired.

The trial court denied petitioner's pro se motion to dismiss, but it did so without reaching the merits of the claim of a speedy-trial violation, and, instead, it effectively struck the pro se motion on the basis that petitioner was represented by counsel. The order instructed that the issue should be brought forth through counsel only.

It is true that a defendant whose motion alleging a speedy-trial violation is denied by the circuit court may, in appropriate cases, seek interlocutory review by petition for writ of certiorari. Ark. R. Crim. P. 28.1 (2012). This court will treat a petition for writ of prohibition requesting

such relief as one for writ of certiorari. *Murria v. Chandler*, 2011 Ark. 56 (per curiam). This, however, is not an appropriate case for interlocutory review of the issue that petitioner seeks to raise. The motion in this case was not denied on the merits of the issue presented, but rather was denied because the trial court ruled that it would not consider the issues in the pro se motion.

Petitioner does not assert that he was proceeding pro se in the trial court or that the court's finding in that regard was in error. Indeed, in a tendered response to the State's response, petitioner indicates that his motivation for filing the pro se motion stemmed from a dispute with his attorney over whether certain continuances, including one for a mental health evaluation, were necessary.

When a defendant does not proceed pro se, with the exception of certain fundamental decisions such as whether a plea is to be entered, whether to waive jury trial, and whether the client will testify, it is the attorney's duty to take professional responsibility for the conduct of the case, after consulting with his client. *Brown v. Gibson*, 2012 Ark. 285, ___ S.W.3d ___ (per curiam). Unless petitioner waived his right to counsel and was proceeding pro se, he was not entitled to consideration of the merits of the motion by the court, and at the trial court's discretion, the motion could be struck. *Id.* While a decision on the merits of the motion asserting a speedy-trial violation may have been one that would be subject to interlocutory review, the trial court's decision to strike the motion did not provide a similar basis for interlocutory review. *See id.* Without a basis for review, petitioner cannot establish a basis for relief, and we therefore deny the petition.

Petition denied.

Bernard Kindall, pro se petitioner.

No response.