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SUPREME COURT OF ARKANSAS

No. CR13-15

TRACY STANDRIDGE PETITIONER v. STATE OF ARKANSAS RESPONDENT	**Opinion Delivered** February 14, 2013 PRO SE MOTION FOR BELATED APPEAL [BAXTER COUNTY CIRCUIT COURT, CR 10-218, HON. ROBERT McCORKINDALE II, JUDGE] MOTION TREATED AS MOTION FOR RULE ON CLERK AND GRANTED.

PER CURIAM

In 2011, petitioner Tracy Standridge was found guilty by a jury of violating a protective order in the Baxter County Circuit Court in case number CR 10-218 and was sentenced to fifty-four months' imprisonment. His probation for a prior offense in Baxter County Circuit Court case number CR 10-57 was revoked on the grounds that he had violated the order of protection. Separate appeals were taken from the revocation order in CR 10-57 and the judgment-and-commitment order in CR 10-218.

The appeal from the revocation order in CR 10-57 was lodged in the Arkansas Court of Appeals in CACR 12-25, and the court of appeals affirmed the order on October 10, 2012. *Standridge v. State*, 2012 Ark. App. 563, ___ S.W.3d ___. The appeal from the judgment-and-commitment order in CR 10-218 was lodged in CACR 12-23. The court of appeals dismissed the appeal in CACR 12-23 on the ground that the only notice of appeal that was filed pertained to the revocation order only. *Standridge v. State*, 2012 Ark. App. 585. In its opinion, the court of appeals noted that two separate judgment-and-commitment orders had

been entered on August 17, 2011. The court of appeals said that the notice of appeal filed on September 9, 2011, gave "notice to appeal his revocation hearing held on the 12th of August, 2011" and that the notice of appeal referenced only case number CR 10-57, the revocation. The court of appeals further stated that there was no notice of appeal from the conviction in CR 10-218, for which the separate judgment had been entered. The court of appeals found that petitioner's notice of appeal was not effective as to the underlying conviction that he attempted to appeal. *Standridge*, 2012 Ark. App. 585, at 2. The court concluded that, whether the question was raised by the parties or not, it is not only the power, but also the duty, of a court to determine whether it has jurisdiction of the subject matter, and petitioner failed to file a notice of appeal, timely or otherwise, from the judgment of conviction arising from his jury trial on the underlying offense of violation of a protective order. On the basis that there was no valid notice of appeal, the appeal was dismissed without prejudice for Standridge to petition this court for permission to file a belated appeal. *Id*. at 2–3.

Now before us is petitioner Standridge's motion to proceed with a belated appeal in the case. We grant the motion because the record filed with the motion for belated appeal reflects that a timely notice of appeal was indeed filed as to the judgment-and-commitment order. Apparently, through some error, the record in CACR 12-23 (CR 10-218) that was before the court of appeals did not contain the notice of appeal.[1] The record lodged with the

[1]After the appeal was dismissed, petitioner filed a pro se petition for rehearing in the court of appeals in CACR 12-23 on November 13, 2012, in which he pointed out that both he and his attorney timely filed a notice of appeal in CR 10-218 and that the record must not be complete if those notices were missing. He asked the court to issue a writ of certiorari to bring up the notices of appeal that he assumed to have been omitted from the record. The petition

motion contains two notices of appeal that designate the judgment entered following the jury trial in CR 10-218. The first was a pro se notice of appeal filed on September 9, 2011, in which petitioner declared his intent to appeal from his "conviction at trial August 12, 2011." The second notice was filed by petitioner's attorney, Mr. Llewellyn J. Marczuk, on September 16, 2011. It also states that the appeal is taken from the judgment-and-commitment entered August 17, 2011, and it designated the entire record of the jury trial held August 12, 2011.

As petitioner has produced a record that demonstrates that there was a timely notice of appeal filed with respect to the judgment, he has established that the appeal should go forward. As there was a valid notice of appeal, we treat the motion for belated appeal as a motion for rule on clerk to lodge the record pursuant to Arkansas Supreme Court Rule 2-2(b) (2012). *Eubanks v. State*, 2011 Ark. 214 (per curiam); *Wilmoth v. State*, 2010 Ark. 315 (per curiam); *Tillman v. State*, 2010 Ark. 103 (per curiam); *Ester v. State*, 2009 Ark. 442 (per curiam) (citing *Mitchem v. State*, 374 Ark. 157, 286 S.W.3d 679 (2008) (per curiam)); *Marshall v. State*, 2009 Ark. 420 (per curiam).

Our clerk is directed to lodge the appeal in the Arkansas Court of Appeals and set a briefing schedule. As Mr. Marczuk was attorney-of-record in the matter and he was not relieved when the court of appeals dismissed the appeal, he remains attorney-of-record for the appeal until such time as the court of appeals should elect to relieve him of that duty and appoint other counsel.

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was denied by per curiam order on December 5, 2012. Counsel for petitioner did not seek rehearing.

Motion treated as motion for rule on clerk and granted.

HOOFMAN, J., not participating.

Tracy Standridge, pro se petitioner.

No response.