

ARKANSAS SUPREME COURT

No. CR 80-40

EUGENE ISAAC PITTS
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered February 14, 2008

PRO SE PETITION TO STAY
RELEASE OF EVIDENCE AND PRO
SE MOTION TO SUPPLEMENT
PETITION [CIRCUIT COURT OF
PULASKI COUNTY, CR 79-471]

PETITION DENIED; MOTION
MOOT.

PER CURIAM

A jury found petitioner Eugene Isaac Pitts guilty of capital felony murder and sentenced him to life imprisonment without parole. This court affirmed the judgment. *Pitts v. State*, 273 Ark. 220, 617 S.W.2d 849 (1981). Petitioner has pursued postconviction relief in the past without success. *See Pitts v. State*, CR 80-40 (May 18, 2000) (per curiam); *Pitts v. State*, 336 Ark. 580, 986 S.W.2d 407 (1999) (per curiam). Our docket shows that this court has considered a number of motions for release of exhibits from the record as evidence for testing and granted the request on some occasions. The most recent release of exhibits was granted on October 4, 2007, following a motion by counsel representing petitioner in proceedings on a petition filed in the trial court for habeas corpus relief under Act 1780 of the 2001 Acts of Arkansas. Petitioner has now filed the pro se petition and motion before us, in which he seeks to stay the release of further evidence for testing and to supplement his petition with a copy of an additional pleading from the trial court's record to show that he has been

granted testing in his Act 1780 proceeding.¹

Petitioner apparently wishes to block the release of further evidence from the record that he anticipates his attorney will request, indicating that he has filed a pleading in the trial court that challenges his attorney's actions in pursuit of additional testing, as well. Petitioner requests this court stay any decision on further release of evidence while the trial court's decision remains pending. Counsel has filed no request in this court for release of exhibits since our order on June 28, 2007, to date, and has not filed any response to the petition.

We will not consider the merits of petitioner's request because he is represented by counsel. Petitioner attaches an affidavit, a letter, and an order by the trial court without file-mark, all indicating that counsel was appointed pro tempore to deal with the testing of evidence only. There is nothing, however, to indicate that a request by counsel for release of additional materials for testing would fall outside of that authority, nor does petitioner argue that it does. Rather, he argues that additional testing would be beyond the scope of Act 1780 and would prejudice his interests. Even if the as-yet-to-be-proposed testing were in fact beyond the scope of the act, counsel may have, in the course of representation of a client on matters concerning that testing, some need to present a claim asserting that it is not.

Right to counsel ends in this state after the direct appeal of the original judgment of conviction is completed, and the State is not obligated to provide counsel in postconviction proceedings. *Hardin v. State*, 350 Ark. 299, 86 S.W.3d 384 (2002) (per curiam). But, where counsel is appointed, this court has held that an appellant is not entitled to accept appointment of counsel to represent him and

¹For clerical purposes, the instant petition and motion were assigned the same docket number as the direct appeal.

also proceed pro se. *Brewer v. State*, ___ Ark. ___, ___ S.W.3d ___ (Nov. 15, 2007); *Hamilton v. State*, 348 Ark. 532, 74 S.W.3d 615 (2002). A defendant is not allowed to compete with his appointed attorney to be heard. See *Monts v. Lessenberry*, 305 Ark. 202, 806 S.W.2d 379 (1991) (per curiam); see also *Franklin v. State*, 327 Ark. 537, 939 S.W.2d 836 (1997) (per curiam).

Counsel possesses the superior ability to examine the record, research the law and marshal arguments in the defendant's behalf. With the exception of certain fundamental decisions, it is the attorney's duty to take professional responsibility for the conduct of the case, after consulting with his client. *Monts*, 305 Ark. at 206, 806 S.W.2d at 381-382. In the event that a dispute develops between counsel and his client such that the preparation and presentation of the case is jeopardized, the defendant may seek to retain or have appointed a new attorney. *Id.* Representation by trained counsel is of distinct benefit to an appellant or petitioner as well as the court. See *Fudge v. State*, 341 Ark. 652, 19 S.W.3d 22 (2000) (per curiam). Even the right to counsel does not provide the right to counsel who substitutes the judgment of the accused for his or her own professional judgment. *Hadley v. State*, 322 Ark. 472, 910 S.W.2d 675 (1995).

Because petitioner is represented by counsel in this matter, we will not consider the merits of his petition. We decline to issue any order prohibiting his counsel from filing any pleading in this court that he may consider appropriate to that representation. Accordingly, we deny the petition and the motion to supplement it is therefore moot.

Petition denied; motion moot.