
IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

Filed January 26, 2001

ORDER

The Rules of the Tennessee Court of Criminal Appeals are amended by adding thereto the following, which shall become Rule 22 of this Court:

Rule 22. Frivolous Appeals: Withdrawal of Appointed Counsel. If, on direct appeal to this court, appointed counsel for an indigent defendant concludes, after a conscientious examination of the entire record and the applicable law, that the appeal is frivolous under Anders v. California, 386 U.S. 738 (1967), and that continued representation by counsel would violate the Code of Professional Responsibility, Rule 8, Rules of the Supreme Court, counsel may move the court in writing to permit withdrawal from further representation of the indigent defendant.

(A) Counsel's role as an advocate requires that counsel support the appeal to the best of counsel's ability. Counsel must function zealously and resolve all doubts and ambiguous legal questions in favor of the defendant. Counsel should not seek to withdraw from a case merely because he or she determines that the appeal lacks merit. Counsel should serve as both advocate and adviser to the client.

(B) A "frivolous" appeal is not merely one that is likely to be unsuccessful. It is one that is so readily recognizable as devoid of merit that there is little, if any, prospect that it can ever succeed. To be frivolous, an appeal must be so clearly untenable or manifestly insufficient that its character may be determined by a bare inspection of the record, without argument or research. An appeal is not frivolous when a substantial justiciable question can be identified from the whole record or any part of it, even though such question is unlikely to be decided other than as decided by the lower court.

(C) If counsel determines that an appeal is frivolous, counsel may file a motion to withdraw with this court. The motion must be accompanied by (1) a Rule 22 Brief in Support of motion to withdraw and (2) a complete transcript of all relevant proceedings. The mere statement by counsel that there were no errors of law below or that the appeal is without merit does not satisfy the requirements set forth herein. The Rule 22 Brief must contain an argument section

consisting of the following:

- (1) a list of all rulings adverse to the defendant made by the trial court on any objections, motions or requests made by either party, with an explanation as to why each adverse ruling is not a meritorious ground for appeal;
- (2) a discussion of the evidence introduced against the defendant;
- (3) a recitation of the trial court's rulings;
- (4) a briefing of any issue that might arguably support an appeal;
- (5) references to pertinent testimony and citations to the record; and
- (6) citations to legal authority supporting counsel's analysis and conclusions.

(D) Counsel shall furnish a copy of the motion to withdraw and Rule 22 Brief to the indigent defendant by certified mail, return receipt requested. The return receipt shall be filed with the clerk of this court.

(E) The indigent defendant shall, upon receipt of the motion to withdraw and Rule 22 Brief, be afforded thirty (30) days to submit a responsive brief raising any claims of error or additional points or supplementing any existing issues presented in counsel's Rule 22 Brief.

(F) After a full examination of the entire record, this court, through a motions panel, will proceed to determine (1) whether counsel has diligently searched the record for arguable claims and (2) whether the appeal is wholly frivolous. If it so finds, the court shall dismiss the appeal in accordance with Rule 20 of the Tennessee Court of Criminal Appeals, and grant counsel's motion to withdraw. The court shall notify the defendant of the right to file a *pro se* Application for Permission to Appeal with the clerk of the Tennessee Supreme Court within sixty (60) days after entry of final judgment. If, however, this court finds there to be legal points arguable on their merits, and that the appeal is therefore not frivolous, the court shall, at its discretion, either direct moving counsel to submit an advocate's brief on the merits or be allowed leave to withdraw.

(G) Failure to strictly comply with the requirements of this Rule will result in dismissal of the motion to withdraw. No motions to amend, modify or supplement the motion to withdraw or Rule 22 Brief so as to conform with the requirements of subsection (C) of this Rule will be granted.

(H) The filing of a motion to withdraw pursuant to this Rule, when

accompanied by the required brief, shall suspend further proceedings on the appeal until this court rules on the motion to withdraw.

(I) The Attorney General is not required to file a brief in response to a Rule 22 Brief, unless ordered to do so by the court.

Gary R. Wade, Presiding Judge

Joseph M. Tipton, Judge

David H. Welles, Judge

David G. Hayes, Judge

Jerry L. Smith, Judge

Joe G. Riley, Judge

Thomas T. Woodall, Judge

James Curwood Witt, Jr., Judge

John Everett Williams, Judge

Norma McGee Ogle, Judge

Alan E. Glenn, Judge

Robert W. Wedemeyer, Judge