Court of Appeals
of the State of Georgia

ATLANTA, March 09, 2020

The Court of Appeals hereby passes the following order:

A20A1044. IVERY LEE WILLIAMS v. THE STATE.

Appointed counsel for the appellant, Ivery Lee Williams, has filed a motion for this Court to allow him to withdraw from representing Williams in this appeal. For the reasons discussed below, the motion to withdraw is DENIED and the case is REMANDED to the Superior Court of Bacon County.

This case has a complex procedural history. In April 2018, Williams, who elected to represent himself at trial, was convicted of false imprisonment, aggravated battery, violation of the Controlled Substance Act, and possession of a firearm by a convicted felon. After conducting a hearing, the trial court denied Williams's pro se motion for new trial on April 12, 2019. On May 1, 2019, Williams filed a pro se notice of appeal with this Court.

On May 3, 2019, Williams filed a motion in the trial court seeking appointment of appellate counsel. On June 4, 2019, Tim Lewis, Esq., filed an entry of appearance on behalf of Williams in the trial court. That same day, however, Williams filed a letter in the trial court that was addressed to the Georgia Public Defender Council in which he stated that he wanted to represent himself. On June 12, 2019, Lewis filed a motion in this Court to remand the case to the trial court to determine the representation issue. On June 24, 2019, this Court granted the motion to remand. Following remand, on December 11, 2019, the trial court entered an order reciting that a hearing had been conducted on November 12, 2019[1] and finding that Williams had "knowingly and voluntarily availed himself of his right to representation by an

[1] A transcript of the hearing is not included in the appellate record.

attorney on his direct appeal" and that Lewis would serve as his counsel.

The appeal was redocketed in this Court on January 7, 2020. This Court subsequently entered an order requiring that an enumeration of errors and appellate brief be filed by no later than February 13, 2020. On February 14, 2020, Williams filed a motion for an extension of time that he labeled as "pro se," and on February 25, 2020, Lewis filed a motion for an extension of time on behalf of Williams. On February 27, 2020, this Court granted the motion for extension of time filed by Lewis on behalf of Williams.

In a separate motion filed on February 25, 2020, Lewis sought to withdraw as counsel, stating that Williams had informed him by letter that he no longer wished to be represented by counsel on appeal and that he had decided to proceed on appeal pro se. In an amendment to his motion, Lewis included a copy of the letter he received from Williams that had a check mark by the statement, "I will represent myself." That motion, as amended, is currently before this Court.

Where appellate counsel appointed by the trial court seeks for good cause to withdraw from a pending appeal, the case must be remanded to the trial court for consideration of whether the appellant can represent himself and whether appellate counsel's motion to withdraw should be granted. See *Williams v. State*, __ Ga. __, n. 1 (No. S19A1250, decided Jan. 27, 2020); *Knowles v. State*, 245 Ga. App. 523, 526 (9) (538 SE2d 175) (2000); *Holt v. State*, 205 Ga. App. 40 (421 SE2d 131) (1992). Accordingly, appellate counsel's motion to withdraw filed in this Court is DENIED. This case is REMANDED to the trial court for a hearing to address Lewis's motion to withdraw, to address Williams's apparent intention to conduct his appeal pro se, and to establish a record that Williams was instructed as to his right to counsel and the dangers of proceeding without counsel. See *Merriweather v. Chatman*, 285 Ga. 765, 766 (684 SE2d 237) (2009); *Cochran v. State*, 253 Ga. 10 (315 SE2d 653) (1984); *Clark v. Zant*, 247 Ga. 194, 195 (275 SE2d 49) (1981). Upon resolution of these issues in an order entered by the trial court, the Clerk of the Superior Court of

Bacon County is directed to transmit the record and hearing transcript to this Court for redocketing of the appeal.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta, 03/09/2020
I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.
Witness my signature and the seal of said court hereto affixed the day and year last above written.

Stephen E. Castlen , *Clerk.*