

Court of Appeals of the State of Georgia

ATLANTA, October 23, 2008

The Court of Appeals hereby passes the following order:

A09A0158. RANDALL v. THE STATE.

Appellant in the above-referenced case has requested that this case be remanded to the trial court for the purpose of conducting an evidentiary hearing on appellant's claim of ineffective assistance of counsel. Appellant argues that because appellate counsel did not enter an appearance until after the notice of appeal had been filed, this motion is the earliest practicable moment in which appellant could raise the issue of ineffective assistance of trial counsel.

Upon consideration of appellant's motion and our review of the record, it is hereby ordered that this case be remanded to the trial court to allow appellant to file a motion for new trial raising the issue of ineffective assistance of trial counsel and also for an evidentiary hearing on this issue, said motion to be filed by appellant within 30 days of the date of this order. See *Davitt v. State*, 232 Ga. App. 427, 429 (4) (502 SE2d 300) (1998). It is further ordered that if the trial court finds that appellant was denied effective assistance of counsel, a new trial is required. If the trial court finds that appellant was not denied effective assistance, appellant shall have 30 days in which to file a notice of appeal of the trial court's ruling.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta OCT 23 2008

*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.*

William Z. Mantz, Jr.
....., Clerk.