

Larry E. HERITAGE v. STATE of Arkansas  
CA CR 88-254 775 S.W.2d 80  
Court of Appeals of Arkansas  
Opinion delivered July 5, 1989

1. APPEAL & ERROR — FAILURE TO FILE BRIEF IN CRIMINAL CASE — NO RULE PROVIDING FOR DISMISSAL. — Although Ark. Sup. Ct. Rule 10 provides for dismissal of civil cases where no brief is filed, there is no corresponding rule in criminal cases.
2. APPEAL & ERROR — FAILURE TO FILE BRIEF IN CRIMINAL CASE. — Where appellant's brief was due over six months ago but his retained attorney has not made a motion to file a belated brief or responded to a letter sent by the court clerk less than six months ago notifying him that appellant's brief was overdue, the court allowed appellant one month to file a brief or face dismissal of his appeal.

Motion to dismiss; denied.

*Richard Tuberville*, for appellant.

*Steve Clark*, Att'y Gen., by: *Theodore Holder*, Asst. Att'y Gen., for appellee.

PER CURIAM. The appellee in this criminal case, the State of Arkansas, has filed a motion to dismiss the appeal on grounds that the appellant has failed to file a brief. The State asserts that the appellant's attorney has been contacted both by the Clerk of the Supreme Court and the Court of Appeals and the Attorney General's office, but that no brief has been filed.

Our Clerk's records indicate that the record in this appeal was filed on November 3, 1988, and the appellant's brief was due to be filed on December 13, 1988. The appellant's attorney, who was apparently retained by the appellant rather than appointed according to our records, has not filed a brief. No motion for extension of time or motion to file a belated brief has been filed, nor has the attorney, Richard Tuberville, responded to a letter sent by our Clerk on January 19, 1989, notifying him that his brief was overdue.

[1, 2] Although Ark. Sup. Ct. Rule 10 provides for dismissal of civil cases where no brief is filed, there is no corresponding rule in criminal cases. Therefore, we allow the appellant until

August 7, 1989, to file a brief. The appellant may retain new counsel if he wishes, or, if the appellant now believes himself to be indigent and therefore unable to afford retained counsel, he may apply for appointment of counsel by filing the appropriate documents with the Clerk of this Court. If no brief is filed within the period allowed by this per curiam, either by present counsel, new counsel, or by the appellant *pro se*, this appeal will be dismissed.

The Clerk of this Court is directed to serve a copy of this per curiam on the appellant; the appellee; the surety on the appellant's bond, Ace Bonding Company; and on the Arkansas Supreme Court Committee on Professional Conduct.

Motion denied.

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