

## Craig KENNEDY v. STATE of Arkansas

CA CR 89-258

789 S.W.2d 746

Court of Appeals of Arkansas  
En Banc

Opinion delivered June 20, 1990

1. APPEAL & ERROR — NO BRIEF FILED IN CRIMINAL CASE — RULE 10 APPLIES TO CIVIL CASES. — Although Ark. Sup. Ct. R. 10 provides for dismissal of civil cases where no brief is filed, there is no corresponding rule in criminal cases.
2. APPEAL & ERROR — CRIMINAL CASE — BRIEF DUE SEVEN MONTHS AGO — NO BRIEF FILED — ATTORNEY WRITTEN TWICE AND WARNED OF SANCTIONS — NO RESPONSE — BRIEF MUST BE FILED WITHIN TWO WEEKS OR APPEAL WILL BE DISMISSED. — Where appellant's brief was due seven months ago but no brief was filed, where the Clerk wrote two letters to appellant's attorney asking for information on the status of the case and in the second letter warned counsel of possible sanctions if he did not respond within seven days, and where no response has yet been received, the court gave appellant two weeks to file a brief—either pro se, by his present attorney, or by new counsel whether retained or appointed—or the appeal will be dismissed.

Motion for Dismissal Pursuant to Supreme Court Rule 10; denied.

*Larry Horton*, for appellant.

No response.

PER CURIAM. Appellant's brief was due to be filed in this Court on November 14, 1989. On November 21, 1989, we granted appellant a 30-day extension to file his brief. As of this date, June 20, 1990, appellant has not filed a brief with this Court.

On January 11, 1990, the Clerk of this Court wrote a letter to appellant's counsel of record, Mr. Larry Horton, Route One, Bismarck, Arkansas, 71929, inquiring as to the status of this case and requesting a response within seven days. No response by Mr. Horton was received. On April 20, 1990, the Clerk of this Court again wrote Mr. Horton to inquire of the status of the case and to advise him of possible sanctions if he did not respond within seven days. This Court has not received a response to this inquiry.

According to our records, appellant's counsel, Larry Horton, was apparently retained by appellant rather than appointed by the Court. Mr. Horton has neither responded to any of this Court's written inquiries, nor has he filed a brief on behalf of the appellant. No further motions for extensions of time for the filing of a belated brief have been filed.

[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 appellant until July 5, 1990, to file a brief. Appellant may retain new counsel if he wishes, or, if 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 appellant; appellee; the sureties on the appellant's bond, Sidney and Minola Kennedy, 410 S. New Orleans Street, Brinkley, Arkansas, 72021; and the Arkansas Supreme Court Committee on Professional Conduct.

Motion denied.