

ARKANSAS COURT OF APPEALS

DIVISION III

No. CACR08-1093

ALLEN L. LAMPKIN

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered MAY 13, 2009

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
[NO. CR 2005-3202]

HONORABLE BARRY SIMS, JUDGE

REVERSED AND REMANDED

ROBERT J. GLADWIN, Judge

This is the second appeal in this case. Appellant Allen Lampkin argues that the circuit court abused its discretion in dismissing his district-court appeal and remanding the case back to district court when he failed to appear at a pretrial status hearing. The State concedes error; because we agree, we again reverse and remand.

Appellant was convicted in the Little Rock District Court of driving while intoxicated. He appealed, and the circuit court dismissed the appeal and remanded the case to district court for sentencing. He appealed the circuit-court dismissal, and this court reversed the dismissal, holding that the circuit court erred in determining that appellant failed to appear without good cause. On remand, a pretrial status hearing was held in the circuit court on April 28, 2008. Neither appellant nor his attorney appeared that day. On May 27, 2008, the circuit



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court entered an order again dismissing his appeal and remanding the case to Little Rock District Court. This timely appeal followed.

We review questions of statutory interpretation de novo and construe criminal statutes strictly, resolving all doubts in favor of the defendant. *See Lampkin v. State*, 101 Ark. App. 275, 275 S.W.3d 679 (2008). An appellant may raise an erroneous dismissal for the first time on appeal. *See Ayala v. State*, 365 Ark. 192, 226 S.W.3d 766 (2006).

Arkansas Code Annotated section 16-96-508 (Repl. 2006) permits the circuit court to dismiss an appeal and remand the case back to the district court when a defendant fails to appear for trial. However, a dismissal is not proper when the defendant fails to appear for a pretrial hearing. *See Ayala, supra; Williams v. State*, 79 Ark. App. 216, 85 S.W.3d 561 (2002).

Because appellant failed to appear at a pretrial hearing, rather than at his trial, the parties agree that the circuit court lacked the authority to dismiss appellant's appeal. We agree and reverse and remand for further proceedings.

Reversed and remanded.

HART and KINARD, JJ., agree.

***William R. Simpson, Jr.*, Public Defender, by: *Clint Miller*, Deputy Public Defender, for appellant.**

***Dustin McDaniel*, Att'y Gen., by: *David R. Raupp, Sr.* Ass't Att'y Gen., for appellee.**