

Cite as 2019 Ark. App. 260

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CR-18-1017

TERRY DOVER

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

OPINION DELIVERED: MAY 8, 2019

APPEAL FROM THE ST. FRANCIS
COUNTY CIRCUIT COURT
[NO. 62CR-18-26]

HONORABLE CHRISTOPHER W.
MORLEDGE, JUDGE

REVERSED AND DISMISSED

ROBERT J. GLADWIN, Judge

Appellant Terry Dover appeals the order entered by the St. Francis County Circuit Court denying his motion to dismiss on the basis of double jeopardy. Because the circuit court did not acquire jurisdiction of the appeal from the district court, we reverse and dismiss.

Dover was convicted in the St. Francis County District Court on January 31, 2018 on charges of no seat belt, careless driving, possession of an open container in a vehicle, failure to carry a driver's license, driving while intoxicated (DWI), and refusal to submit to a chemical test. He filed a certified copy of the district-court docket sheet in circuit court on February 1 as the notice of appeal on the charges of DWI and refusal to submit to a chemical test.

The handwritten docket-sheet provides that the following actions occurred:

on February 9, 2018, Judge Ann Hudson presided over the adjudication of Dover's appeal; the State and Dover appeared with counsel and announced that they were ready for trial; the State presented no proof and called no witnesses, instead standing on its proof; and Dover moved for a directed verdict based on the State's lack of evidence, after which Judge Hudson rendered a not-guilty verdict.¹

Judge Hudson entered an order on February 9, 2018, finding Dover not guilty on the DWI and refusal-to-submit charges and guilty of the remaining charges. The order contains a note that the prosecuting attorney had approved the order by phone. Eleven days later, on February 20, Judge Hudson, *sua sponte*, in a handwritten note on the same page as her original ruling on the district court's docket, set aside and "held for naught" the February 9 order and placed Dover's case on the misdemeanor-appeals docket for trial on March 23, 2018. Judge Hudson gave no reason for setting aside the order but relied on Arkansas Rule of Civil Procedure 60 (2018) to state that the order "serves as notice to the parties of the court's action and if the defendant has any response pursuant to Rule 60, he should file same within the time allowed under Rule 60 for response to motions."

On August 2, 2018, Dover filed a motion to dismiss and brief in support alleging that a trial on the charges of DWI and refusal to submit would violate double jeopardy. The State filed a response to Dover's motion to dismiss on August 14, and on August 16, a hearing was held before Judge Christopher Morledge on the motion to dismiss.

Judge Morledge made a factual determination that Judge Hudson lacked sufficient evidence to render a judgment of not guilty at the February 9 adjudication and orally denied

¹There is no transcript of this hearing in the record.

Dover's motion to dismiss, set the matter for trial on October 22, and in a written order entered on September 28, found that jeopardy had not attached. Dover filed a timely notice of appeal on September 17 and filed an amended notice of appeal on October 3.

In *Jones v. State*, 2018 Ark. App. 211, we reiterated that Arkansas Rule of Criminal Procedure 36(c) (2018) sets forth the manner in which an appeal from a district court is perfected. Rule 36(c) requires that the defendant make a written request on the district court clerk to prepare a certified record, that the defendant serve a copy of that written request on the prosecuting attorney for the judicial district, and that the defendant file a certificate of such service with the district court. Failure to strictly comply with Rule 36 deprives both the circuit court and the appellate court of jurisdiction. See *Treat v. State*, 2019 Ark. App. 212, 574 S.W.3d 221 (requiring strict compliance with Rule 36); *Jones*, 2018 Ark. App. 211, at 6.

The record before us does not indicate that Dover made a written request to the district court clerk to compile the record, to serve that written request on the prosecuting attorney, or to file that request with the district court clerk. Consistent with the holdings in *Jones* and *Treat*, because Dover failed to strictly comply with Rule 36, the circuit court never gained jurisdiction of the appeal. Its actions, therefore, are reversed, and the district court's order stands.

Reversed and dismissed.

VIRDEN and WHITEAKER, JJ., agree.

Jerry Roberts, for appellant.

Leslie Rutledge, Att'y Gen., by: *Adam Jackson*, Ass't Att'y Gen., for appellee.