

William TERRY *v.* STATE of Arkansas

613 S.W. 2d 90

Supreme Court of Arkansas
March 16, 1981

APPEAL & ERROR — BELATED APPEALS IN CRIMINAL CASES — MOTION FOR RULE ON CLERK, NOT GOOD CAUSE FOR GRANTING. — There is not good cause to grant a motion for rule on the clerk where the motion filed by the attorney for a criminal defendant stated that the record was not timely filed because the record arrived at the Appellate Public Defender's office two days before the due date, but was not turned over immediately to the assigned attorneys because the office's director was involved in legislative matters.

Motion for rule on clerk; motion denied.

E. Alvin Schay, State Appellate Defender, by: *Jack R. Kearney*, Deputy Defender, for appellant.

Steve Clark, Atty. Gen., for appellee.

PER CURIAM. William Terry, through his attorney, has filed a motion for a rule on the clerk. The motion admits that the record was not timely filed and states the reason for the delay is:

The record in this case arrived at the Appellate Public Defender's office approximately two days before the due date, but was not turned over immediately to the attorney to whom it was assigned because the Appellate Public Defender's director was involved with legislative efforts to continue operation of said office.

If the motion, verified, had stated that the attorney was at fault in making an error in the computation of time, or gave any good cause, the motion could be granted.

In a *per curiam* opinion regarding belated appeals rendered February 5, 1979, 265 Ark. 964, we discussed the problem of an untimely tender of a record caused by the attorney. There we said that we have no alternative except to

grant the motion for relief in such a case. However, we pointed out that a copy of the *per curiam* order would be forwarded to the Committee on Professional Conduct as is our practice.

We do not hold that we will deny this belated appeal when a good cause is shown to grant the rule on the clerk.
