

Lynn MELTON *v.* STATE of Arkansas

620 S.W. 2d 946

Supreme Court of Arkansas
Opinion delivered September 14, 1981

APPEAL & ERROR — RESPONSIBILITY OF ATTORNEY OF RECORD TO FILE RECORD ON APPEAL — PROPER AFFIDAVIT MUST ACCOMPANY MOTION FOR RULE ON THE CLERK. — It is the responsibility of the attorney of record to see that the record on appeal is properly maintained, and where an attorney for a criminal defendant fails to file the required affidavit when he files a motion for rule on the clerk requesting permission to file the record late, the motion will be denied, without prejudice to his right to file a second motion with proper affidavit attached.

Motion for Rule on the Clerk; motion denied.

Thomas A. Martin, Jr., for appellant.

Steve Clark, Atty. Gen., by: *Alice Ann Barns*, Asst. Atty. Gen., for appellee.

PER CURIAM. Lynn Melton, by his attorney, Thomas A. Martin, Jr., filed a motion for a rule on the clerk. The motion does not contain the necessary affidavit as required by this Court in a Per Curiam order of February 5, 1979, 265 Ark. 964 (1979).

It is the responsibility of the attorney of record to see that the record on appeal is properly maintained. See *Nelson v. State*, 272 Ark. 287, 613 S.W. 2d 598 (1981) and *Wilson v. State*, 273 Ark. 456, 620 S.W. 2d 936 (1981).

The motion will be denied without prejudice to file a second time.