

Donald E. COLYER *v.* STATE of Arkansas

627 S.W. 2d 22

Supreme Court of Arkansas  
Opinion delivered February 1, 1982

Motion for rule on the clerk; motion denied.

APPEAL & ERROR — MOTION FOR RULE ON THE CLERK — DENIAL WHERE NO GOOD CAUSE SHOWN. — If an affidavit is attached to a motion for rule on the clerk, admitting a late notice of appeal and a late tendering of the record due to an error in the computation of time by the attorney, or carelessness on his part, or any good cause, the motion can be granted; however, where no good cause is shown, the motion for rule on the clerk will be denied without prejudice.

*F. James Jefferson*, for appellant.

*Steve Clark*, Atty. Gen., for appellee.

PER CURIAM. Appellant Donald E. Colyer, by his attorney F. James Jefferson, has filed a motion for a rule on the clerk. The motion implies that a notice of appeal was not given and indicates that the record may not have been timely filed. The motion for a rule on the clerk is denied as no good reason is given for the dilatory actions.

If an affidavit had been attached to the motion, and if it had admitted a late notice of appeal and a late tendering of the record, and if it had stated that the attorney was careless in the computation of time, or made an error, 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*. We decided that we have no alternative but to grant the motion for relief in such a case. However, we pointed out that a copy of the opinion would be forwarded to the Committee on Professional Conduct as is our practice.

Accordingly, we deny without prejudice the motion for a rule on the clerk.

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