

Richard Phillip ANDERSON *v.* STATE of Arkansas

CR 82-69

641 S.W.2d 715

Supreme Court of Arkansas  
Opinion delivered November 15, 1982

1. **APPEAL & ERROR — MOTION TO FILE BELATED BRIEF IN CRIMINAL CASE WHERE TO DO OTHERWISE WOULD DENY APPELLANT RIGHT OF APPEAL.** — A motion to file a belated brief in a criminal case will be granted where to do otherwise would operate to deny the appellant a right to appeal because of his attorneys' neglect of a professional duty.
2. **APPEAL & ERROR — FAILURE OF ATTORNEY TO STATE GOOD CAUSE FOR LATE TENDER OF BRIEF CONSIDERED ADMISSION HE WAS AT FAULT.** — An attorney's failure to state good cause for the late tendering of the brief must be considered an admission that he was at fault.

Appellant's Motion to File an Extended Belated Brief;  
motion granted.

*Rose, Kinsey & Cromwell*, by: *William M. Cromwell*  
and *Sam Park*, for appellant.

*Steve Clark*, Atty. Gen., by: *Theodore Holder*, Asst. Atty. Gen., for appellee.

PER CURIAM. Appellant, through his attorneys, William Cromwell and Sam Park, has filed a motion to file an extended brief of 47 pages. The appellee has also requested permission to file an extended brief of 43 pages. We grant the appellant and appellee permission to file extended briefs as requested.

Appellant also filed a motion on August 23, 1982, asking that he be permitted to file a belated brief. The motion was denied, but we said that in accordance with our Per Curiam order of February 5, 1979, 265 Ark. 964, it was subject to being granted if the attorneys would accept responsibility or give other cause for the failure to file the brief within time. One of the attorneys, Mr. Cromwell, has complied with the procedure set forth in that order and has submitted an affidavit accepting fault for the untimely tendering of the brief. The other attorney, Mr. Park, has not responded.

Even though Mr. Park has not conceded his error or offered other good cause for the untimely tender, we will grant the motion for belated brief since to do otherwise would operate to deny the appellant a right to appeal because of his attorneys' neglect of a professional duty. See *Surridge v. State*, 276 Ark. 596, 637 S.W.2d 597 (1982). We further note that Park's failure to state good cause for the late tendering of the brief must be considered an admission that he was at fault.

A copy of this opinion will be forwarded to the Committee on Professional Conduct.

Motion granted.