

Wayne DUNCAN v. STATE of Arkansas

724 S.W.2d 179

Supreme Court of Arkansas

Opinion delivered February 23, 1987

APPEAL & ERROR — MOTION FOR RULE ON THE CLERK — COUNSEL'S NEGOTIATION WITH PROSECUTING ATTORNEY TO OBTAIN RELIEF FROM CONVICTION OF CRIMINAL DEFENDANT — NO JUSTIFICATION FOR DELAY IN PURSUING APPEAL. — The Supreme Court will normally grant a motion for Rule on the Clerk when counsel for a criminal defendant admits that, because of an oversight, he failed to tender the record in time; however, negotiations with the prosecuting attorney in an effort to obtain relief from a conviction and/or penalty pose no justification for delay in pursuing a proper appeal.

Motion for Rule on the Clerk; remanded for hearing.

Wayne Emmons, for appellant.

No objection by appellee.

PER CURIAM. Appellant has filed a motion for rule on the clerk wherein his attorney admits, because of oversight, he failed

to tender the record within the seven-month limit required under Rule 5 of the Arkansas Rules of Appellate Procedure. While we normally grant such motion upon confession-of-error by the attorney, the appellant's motion, with affidavit attached, reflects that further, substantial delay in filing the record was due to counsel's apparent negotiations with the prosecuting attorney in efforts to obtain relief from the conviction and/or penalty imposed below. If he had successfully obtained that relief, an appeal would have been unnecessary.

[1] Clearly, such negotiations pose no justification for delay in pursuing a proper appeal, so we remand this cause to the trial court for a hearing to determine if a willful or intentional violation of the appellate rules has occurred by the appellant, if the occurrence is one of ineffective assistance of counsel, or if there is some other good and justifiable cause for the delay. Accordingly, the court withholds granting appellant's motion until the trial court has conducted its hearing and has transmitted and certified its findings to this court.
