

Thomas Kevin TAYLOR v. STATE of Arkansas

RC 88-54

757 S.W.2d 959

Supreme Court of Arkansas  
Opinion delivered October 17, 1988

1. APPEAL & ERROR — FILING NOTICE OF APPEAL — EXTENSIONS. — At the time of this case, Ark. R. App. P. 4(c) provided for extension of the time for filing a notice of appeal by filing a new trial motion, but it was required that the motion for new trial be ruled on or taken under advisement within thirty days or it would be deemed denied.
2. APPEAL & ERROR — TIME FOR FILING — WHEN TIME BEGAN TO RUN. — The time for filing a notice of appeal began to run at the end of thirty days from the time the new trial motion was filed.
3. APPEAL & ERROR — ORDER TAKING MOTION UNDER ADVISEMENT WAS NOT EFFECTIVE UNLESS IT WAS A MATTER OF RECORD WITHIN THE THIRTY DAYS FOR FILING OF THE MOTION FOR A NEW TRIAL. — The trial judge's order taking the new trial motion under advisement was of no effect unless that order was a matter of record within the thirty days of the filing of the motion for new trial.
4. APPEAL & ERROR — ATTORNEY'S RESPONSIBILITY TO FILE TIMELY NOTICE OF APPEAL — COURT WILL PERMIT RECORD TO BE FILED IF

ATTORNEY ACCEPTS FULL RESPONSIBILITY. — The supreme court will permit the record to be filed if the attorney whose responsibility it was to file a timely notice of appeal accepts full responsibility for having failed to do so.

Motion for Rule on the Clerk; denied.

*Matt Keil*, for appellant.

*Steve Clark*, Att'y Gen., by: *Theodore Holder*, Asst. Att'y Gen., for appellee.

PER CURIAM. [1, 2] The appellant, Thomas Kevin Taylor, seeks to appeal a judgment of conviction entered January 14, 1988. He filed a motion for a new trial January 22, 1988, which was denied April 8, 1988. His notice of appeal was filed April 25, 1988. At the time, Ark. R. App. P. 4(c) provided for extension of the time for filing a notice of appeal by filing a new trial motion, but it was required that the motion for new trial be ruled on or taken under advisement within thirty days or it would be deemed denied. The time for filing a notice of appeal began to run at the end of thirty days from the time the new trial motion was filed.

[3] On August 15, 1988, an order was filed stating that the trial judge had taken the new trial motion under advisement January 31, 1988. As that order was not a matter of record within thirty days of the filing of the motion for new trial, it was of no effect. *Brittenum & Associates v. Mayall*, 286 Ark. 427, 692 S.W.2d 248 (1985).

[4] The clerk was correct in refusing to docket the case. We will permit the record to be filed if the attorney whose responsibility it was to file a timely notice of appeal accepts full responsibility for having failed to do so. *Tarry v. State*, 288 Ark. 172, 702 S.W.2d 804 (1986).