

SHERIDAN *v.* STATE

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389 S. W. 2d 232

Opinion Delivered April 19, 1965.

1. COURTS—MUNICIPAL COURT, TIME FOR FILING APPEAL FROM.—Under the statute appeals from municipal court must be filed 30 days after rendition of judgment; and while it is the duty of the clerk to file the transcript in the office of the circuit clerk, it is the duty of appellant to see that it is filed. [Ark. Stat. Ann. § 26-1307 (Repl. 1962).]
2. CRIMINAL LAW — PUNISHMENT — EFFECT OF DELAY IN ENFORCING SENTENCE.—Where a convicted person takes necessary steps to appeal, and is released on bond pending appeal, the passage of time is no bar to later enforcement of the judgment after affirmance of conviction by appellant court.
3. CRIMINAL LAW—PUNISHMENT—EFFECT OF DELAY IN ENFORCING SENTENCE.—Where defendant was not given a suspended sentence and did not contend he served any part of the sentence pronounced by municipal court, he was not not entitled to be credited with the time he was free pending appeal.

Appeal from Saline Circuit Court, *H. B. Means*,
Judge; affirmed.

J. B. Milham, for appellant.

Bruce Bennett, Atty. Gen., *By: Jack L. Lessenberry*,
Asst. Atty. Gen. for appellee.

SAM ROBINSON, Associate Justice. On February 28, 1964, appellant was convicted in the Benton Municipal Court of the charge of driving while intoxicated, in violation of Ark. Stat. Ann. § 75-1027—29 (Repl. 1957). October 6, 1964, the transcript of the trial held in the Municipal Court was filed in the Saline Circuit Court. On the 18th day of November, 1964, the case came on for trial. After some evidence had been introduced, the prosecuting attorney discovered that the appeal from the Benton Municipal Court had not been lodged in the Circuit Court within 30 days after the date of the judgment in accordance with Ark. Stat. Ann. § 26-1307 (Repl. 1962). The prosecuting attorney, therefore, moved to dismiss the appeal because it had not been filed in the Circuit Court within the time allowed by law. The Circuit Court granted the motion to dismiss; the defendant, Sheridan, has appealed to this court.

Ark. Stat. Ann. § 26-1307 (Repl. 1962) provides: "If a party appeals from a justice of the peace judgment or a common pleas judgment or a municipal court judgment the clerk of the court or the justice of the peace of the court from which the appeal is taken must file the transcript of the judgment in the office of the circuit court clerk within thirty (30) days after the rendition of the judgment."

When a party appeals it is the duty of the clerk of the municipal court to file the transcript in the office of the circuit clerk, but it is the duty of the party appealing to see that the transcript is so filed, and to give the circuit court jurisdiction the transcript must be filed with the circuit clerk within thirty days after the date of the municipal court judgment. *Whiteley v. Pickens*, 225 Ark. 845, 286 S.W. 2d 4; *Ex parte Hornsby*, 228 Ark. 975, 311 S.W. 2d 529.

Appellant also contends that he cannot now be compelled to serve the sentence pronounced by the Benton Municipal Court because he was sentenced to serve one

year and a year has expired since the rendition of the judgment. As authority he cites *Canard v. State*, 225, Ark. 559, 283 S.W. 2d 685, but the cited case is not in point. There, the defendant had been sentenced to a year and the sentence suspended. After the expiration of the year the court attempted to revoke the suspension. We held that the trial court did not have authority to revoke the suspended sentence after the year had expired. In the case at bar, the defendant was not given a suspended sentence and he does not contend that he has served any part of the sentence pronounced by the Benton Municipal Court. Of course, a defendant who has been sentenced to serve time is not entitled to be credited with the time he is free pending appeal. *Mitchell v. Sanford*, 161 F. 2d 374; *Weber v. Mosley*, 242 S.W. 2d 273. In the last cited case the court said: "Likewise, where a convicted person takes the necessary steps to appeal, the execution of sentence is suspended and the passage of time is no bar to the later enforcement of the judgment after affirmance of the conviction by the appellate court."

Affirmed.
