

Bryson JACOBS v. STATE of Arkansas

CR 93-1137

870 S.W.2d 740

Supreme Court of Arkansas
Opinion delivered February 21, 1994

APPEAL & ERROR — APPEAL LIMITED TO REVIEW OF THE RECORD OF THE TRIAL PROCEEDINGS — ENHANCED TAPES NOT ALLOWED. — The appellant's motion to supplement the record with enhanced tapes was denied as such tapes would present the court with evidence not heard by the jury; on appeal the court is limited to a review of the record of the trial court proceedings, evidence not considered by the jury or the trial court and, thus, not contained in the record, will not be reviewed.

Motion for Extension of Time to File Brief and Motion to Supplement the Record denied.

Larry W. Horton, for appellant.

No response.

PER CURIAM. Appellant Bryson Jacobs moves (1) for additional time to file her brief and (2) to supplement the record with enhanced tapes, or their transcription, concerning the alleged drug transaction at issue. The State Crime Laboratory was unable to enhance the tapes, and Jacobs now states that a private firm in Little Rock may be able to accomplish this. The court reporter's letter is attached to the motion. She states that the tapes were not transcribed by her at trial because they were for the most part unintelligible and inaudible and contained background noises.

[1] The motions are denied, and the clerk is directed to set a briefing schedule. Enhanced tapes would present this court with evidence not heard by the jury. We are limited on appeal to a review of the record of the trial court proceedings. We will not review evidence not considered by the jury or the trial court and, thus, not contained in the record. *Evans v. State*, 271 Ark. 775, 610 S.W.2d 577 (1981); *Weston v. State*, 265 Ark. 58, 576 S.W.2d 705 (1979).

Timothy Allen OLIVER v. STATE of Arkansas
CR 94-113 871 S.W.2d 332
Supreme Court of Arkansas
Opinion delivered February 21, 1994

APPEAL & ERROR — MOTION FOR RULE ON THE CLERK — GOOD CAUSE FOR GRANTING. — An admission by an attorney for a criminal defendant that the record was tendered late due to a mistake on his part is good cause to grant a motion for rule on the clerk.

Motion for Rule on the Clerk; granted.

Dana A. Reece, for appellant.

No response.

PER CURIAM. The appellant, Timothy Allen Oliver, by his attorney, has filed a motion for rule on the clerk. His attorney, Ms. Dana A. Reece, admits that the failure to file the record in time was due to a mistake on her part.

[1] We find that such an error, admittedly made by the attorney for a criminal defendant, is good cause to grant the motion. See our Per Curiam opinion dated February 5, 1979, *In Re: Belated Appeals in Criminal Cases*, 265 Ark. 964.

The motion is therefore granted. A copy of this opinion will be forwarded to the Committee on Professional Conduct.
