

Michael James TANNER v. STATE of Arkansas

CR 94-1261

887 S.W.2d 311

Supreme Court of Arkansas
Opinion delivered December 5, 1994

APPEAL & ERROR — DENIAL OF NEW TRIAL MOTION NEVER ENTERED — NOTICE OF APPEAL FILED WHEN MOTION ORALLY DENIED — TENDERED TRANSCRIPT PROPERLY REJECTED. — Where appellant's motion for a new trial was heard and denied orally on August 29, 1994, and no written order denying the motion was entered, but appellant filed his notice of appeal on the same date as the hearing, the supreme court clerk correctly rejected appellant's tendered transcript because appellant's notice of appeal was invalid.

Motion for Rule on the Clerk denied.

Hatfield & Lassiter, by: *Jack T. Lassiter*; and *Kenneth E. Suggs*, for appellant.

No response.

[1] PER CURIAM. On August 12, 1994, appellant was convicted of two felony counts and sentenced to twenty-four years. On August 22, 1994, appellant filed a motion for new trial. A hearing was held on appellant's motion on August 29, 1994, at which time the trial court orally denied the motion. No written order denying the motion was entered. Nonetheless, appellant filed his notice of appeal on the same date as the hearing. Appellant has now tendered his transcript with the supreme court clerk, but the clerk rejected it because appellant's notice of appeal was invalid since the court's written order denying a new trial had never been filed or entered. The clerk acted in accordance with our rules and case law. *See Nance v. State*, opinion delivered on November 21, 1994.

Appellant's trial attorney shall file within thirty days from the date of this per curiam a motion in this case accepting full responsibility for not timely filing the notice of appeal and transcript, and upon filing same, the motion will be granted and a copy of the opinion will be forwarded to the Committee on Professional Conduct.¹

¹Since trial and the filing of appellant's motion for new trial, new counsel has been added for appeal purposes.