

IN THE MATTER OF CONTEMPT OF COUNSEL,
A. Wayne DAVIS

887 S.W.2d 311

Supreme Court of Arkansas
Opinion delivered December 6, 1994

APPEAL & ERROR — CONTEMPT — HEARING REQUIRED TO DETERMINE IF MERITORIOUS DEFENSE EXISTS — MASTER APPOINTED. — Where counsel appeared and entered a plea of not guilty to the charge of contempt, a hearing was necessary to determine whether or not counsel had a meritorious defense to the charge of failing to file his brief in a timely manner, and a master was appointed.

Appointment of a Master.

PER CURIAM. Ivan Floyd Pipkin was convicted in the Stone County Circuit Court and appealed the judgment of conviction on May 17, 1994. On June 24, 1994, Pipkin's attorney, A. Wayne Davis requested a seven-day clerk's extension making his brief due on July 5, 1994.

On June 27, 1994, Mr. Davis, by letter, confirmed the clerk's extension and acknowledged that the appellant's brief would be due on Tuesday, July 5, 1994. On October 27, 1994, our clerk, Mr. Steen, mailed a letter to Mr. Davis advising him that the records indicated that a brief had not been filed or tendered in the appellant's behalf, nor had a further motion for an extension of time been granted. In addition, the clerk called for a response to his letter, to which Mr. Davis has not replied. Mr. Davis has yet to file a brief on behalf of Mr. Pipkin.

Counsel, A. Wayne Davis, appeared before the court on Monday, December 5, 1994, and entered his plea of not guilty to the charge of contempt.

[1] It is necessary for a hearing to be held to determine whether or not counsel has a meritorious defense to the charge of failing to file his brief in a timely manner. We appoint the Honorable George Cracraft as a Master to conduct the hearing. Counsel will have the burden of proving, by a preponderance of the evidence, that he has meritorious reasons for not filing Mr. Pipkin's brief when due as prescribed by the Rules of Supreme Court, Rule 11.

The Master shall conduct a hearing and make findings of fact. Upon receiving the findings of fact from the Master, we will make a decision as to whether or not counsel, A. Wayne Davis should be held in contempt.