

IN THE MATTER OF CONTEMPT OF COUNSEL,
Frank Shaw and F.N. "Buddy" Troxell

890 S.W.2d 258

Supreme Court of Arkansas
Opinion delivered January 3, 1995

APPEAL & ERROR — CONTEMPT — MASTER APPOINTED TO DETERMINE WHETHER MERITORIOUS DEFENSE EXISTED. — Where, after receiving yet another extension of time in which to file, the attorneys failed to file their belated brief and they entered pleas of not guilty to the charge of contempt, a master was appointed to determine whether respective counsel have a meritorious defense to the charge of failing to file their brief in a timely manner.

Appointment of a Master.

PER CURIAM. On June 20, 1993, a judgment of conviction was entered against appellant Christopher Ray Stone for first-degree murder and a sentence of life imprisonment was imposed. A timely notice of appeal was filed by appellant's trial attorneys, Frank Shaw and F.N. "Buddy" Troxell. The transcript was lodged with this court on February 21, 1994, and at that time appellant's trial attorneys filed motions to be relieved as attorneys on appeal. Their motions to be relieved and to have substitute counsel appointed were denied. Counsel sought reconsideration of their motions to be relieved but reconsideration was denied.

Appellant's attorneys next sought and obtained an extension of time in which to file the appellant's brief to July 1, 1994. When appellant's attorneys did not timely file, the State filed a motion to dismiss the appeal. A response to the motion to dismiss was filed on September 27, 1994, by F.N. "Buddy" Troxell on appellant's behalf. Counsel also filed another motion for extension of time to file a belated brief. By order entered October 10, 1994, this court denied the motion to dismiss the appeal and granted the second motion for extension of time to file a belated brief, extending the time to December 19, 1994. The order indicated that this was a final extension. As of this date, briefs have not been filed on behalf of the appellant.

Counsel F.N. "Buddy" Troxell and Frank Shaw appeared before the court on Monday, January 2, 1995, and entered their respective pleas of not guilty to the charge of contempt.

[1] It is necessary for a hearing to be held to determine whether respective counsel have a meritorious defense to the charge of failing to file their brief in a timely manner. We appoint the Honorable Darrell Hickman as a Master to conduct the hearing. Counsel will have the burden of proving, by a preponderance of the evidence, that they have meritorious reasons for not filing the brief when due as prescribed by the Rules of Supreme Court, Rule 4-3.

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, Frank Shaw and F.N. "Buddy" Troxell, should be held in contempt.
