

Joseph O'NEAL, et al. v. STATE of Arkansas

CR 95-148

896 S.W.2d 592

Supreme Court of Arkansas
Opinion delivered March 20, 1995

1. ATTORNEY & CLIENT — ATTORNEY'S DUTY TO TIMELY FILE RECORD. — It is the attorney's duty to file the record on time.
2. APPEAL & ERROR — COMPLETE RECORD NOT AVAILABLE — PARTIAL RECORD WILL SUFFICE. — When a complete record is not available, a partial record will suffice.
3. APPEAL & ERROR — DENIAL OF PETITION — CONDITIONS UNDER WHICH MOTION WILL BE GRANTED. — If the attorney will concede by affidavit within thirty days from the date of this opinion that it was his fault that the record was not timely filed, or if other good cause is shown, the motion for certiorari for a complete record will be granted.

Petition for Certiorari for Complete Record; denied.

Joseph P. Mazzanti III, for appellant.

No response.

PER CURIAM. Petitioner Joseph O'Neal was convicted of murder in the first degree, robbery and burglary, and he was sentenced to life imprisonment in the Arkansas Department of Correction. The judgment and commitment order was entered on July 19, 1994. A timely notice of appeal was filed, and, on August 5, 1994, the trial court granted petitioner's motion for extension of time to docket appeal. The order stated the court reporter was to file the transcript within "seven months from the filing of the Notice of Appeal."

[1-3] On February 22, 1995, the petitioner filed a partial record with the Clerk and filed this petition for certiorari for complete record. On March 15, 1995, the petitioner tendered the complete record. In this case the record was tendered more than seven months after the entry of the judgment. *See Ark. R. App. P. 5(b)*. It is the attorney's duty to file the record on time. *Franklin v. State*, 318 Ark. 324, 885 S.W.2d 23 (1994). When a complete record is not available, a partial record will suffice. If the attorney will concede by affidavit within thirty days from the date of

this *per curiam* that it was his fault that the record was not timely filed, or if other good cause is shown, then the motion will be granted.
