

Carl Eugene WEBSTER v. STATE of Arkansas
CR 95-373 896 S.W.2d 890
Supreme Court of Arkansas
Opinion delivered May 1, 1995

APPEAL & ERROR — MOTION FOR RULE ON THE CLERK TREATED AS MOTION FOR BELATED APPEAL — MOTION GRANTED. — The admission by the attorney for the criminal defendant that he failed to verify that the judgment and commitment order had been filed prior to the filing of the motion for a new trial was sufficient for the court to treat the motion for rule on the clerk as a motion for belated appeal, which motion was granted.

Motion for Belated Appeal; granted.

Paul Petty, for appellant.

No response.

PER CURIAM. Carl Eugene Webster was convicted of possession of a controlled substance, fleeing, resisting arrest, and disorderly conduct and was sentenced to a combined total of 6 years in the Arkansas Department of Correction and a \$100 fine. Webster filed a motion for a new trial, but the motion was filed before the judgment and commitment order was entered. The motion was, therefore, untimely and ineffective. See Ark. R. Civ. P. 59; Ark. R. App. P. 4(b). Because the motion for new trial was ineffective and the notice of appeal filed by Webster's attorney, Paul Petty, was based on the motion for new trial and filed more than 30 days after the judgment, the notice of appeal also was of no effect.

[1] Mr. Petty assumes responsibility for not verifying that the judgment and commitment order had been filed prior to the filing of the motion for new trial. Because he has assumed responsibility, we treat the motion for rule on the clerk as a motion for belated appeal, and we grant it. We direct that a copy of this order be filed with the Committee on Professional Conduct. See *In Re: Belated Appeals in Criminal Cases*, 265 Ark. 964 (1979).
