

Gus M. PANNELL v. STATE of Arkansas

CR 94-452

897 S.W.2d 552

Supreme Court of Arkansas
Opinion delivered May 1, 1995

APPEAL & ERROR — MOTION FOR BELATED APPEAL DENIED WHERE CASE ALREADY SUBMITTED, DECIDED, AND OPINION ISSUED. — Where appellant was convicted and appealed, the appeal was dismissed because no effective notice of appeal was filed, appellant's counsel filed a motion styled "Motion For A Belated Appeal" admitting it was her error that resulted in the failure to give an effective notice of appeal, and she asks that belated appeal be granted, since A.R.Cr.P. Rule 36.9 provides for belated appeals granted before the case has been submitted to an appellate court, and this case has been submitted, decided, and a signed opinion issued, belated appeal was denied.

Motion for a Belated Appeal denied.

Karen R. Baker, for appellant.

No response.

PER CURIAM. Appellant was convicted of first degree battery. He appealed. We dismissed the appeal because no effective notice of appeal was filed. *Pannell v. State*, 320 Ark. 250, 895 S.W.2d 911 (1995). Appellant's attorney subsequently filed a motion styled "Motion For A Belated Appeal" and has filed a pleading admitting it was her error that resulted in the failure to give an effective notice of appeal. She asks that, because of her error, we grant a belated appeal.

Under authority of A.R.Cr.P. Rule 36.9, we grant belated appeals because of attorneys' errors, but those are granted before the case has been submitted to an appellate court. *See, e.g., Krein v. State*, 318 Ark. 172, 883 S.W.2d 481 (1994). This case, however, has already been taken under submission and decided, and a signed opinion has been handed down. *See Ark. Sup. Ct. R. 5-2(a)*. In a comparable case, one of the petitioners, Hogrobrooks, attempted to appeal from a criminal contempt order. No effective notice had been filed. We noted that under Rule 36.9 we could act upon and decide a case when a good reason was shown for the omission. However, because no good reason had been shown *by the time the case was submitted*, we dismissed the appeal with prejudice. *Davis v. State*, 319 Ark. 171, 889 S.W.2d 769 (1994).

After the signed opinion was handed down in this case, the petitioner could have timely filed a petition for rehearing, but a petition for rehearing is limited to calling attention to specific errors of law or fact which the opinion is thought to contain. Ark. Sup. Ct. R. 2-3(g). A rehearing does not encompass a set of new facts, new briefs, and new arguments. Yet, that is precisely what would occur if we granted a motion for a belated appeal after an appellate opinion was handed down. If we were to allow such a practice there would be much less finality to appellate opinions.

[1] Accordingly, the petition for a belated appeal is denied.