

Earven HADLEY, Jr. v. STATE of Arkansas

CR 95-657

902 S.W.2d 231

Supreme Court of Arkansas
Opinion delivered July 17, 1995

APPEAL & ERROR — MOTION FOR RULE ON CLERK — TREATED AS MOTION FOR BELATED APPEAL — GRANTED. — Where appellant's notice of appeal from an amended judgment was invalid, the supreme court treated appellant's motion for rule on the clerk as a motion for belated appeal and granted it.

Motion granted.

Baim, Gunti, Mouser, De Simone & Robinson, by: *Greg Robinson*, for appellant.

No response.

PER CURIAM. Appellant Earven Hadley, Jr., who was represented by Gregory N. Robinson, was convicted of rape and incest, and the jury recommended a twenty year sentence on each count. On October 7, 1994, the circuit court entered a judgment and commitment order that ordered the sentences on the two counts to be run concurrently. On October 13, 1994, the appellant filed a timely notice of appeal for that judgment. On November 4, 1994, the circuit court entered an amended judgment and commitment order which provided that the sentences should run consecutively. On December 1, 1994, the appellant filed a motion to modify the amended sentence. A hearing was held on that motion on December 21, 1994, and the circuit court orally denied the motion at that hearing. No written order of denial was entered. On Decem-

ber 30, 1994, the appellant filed a notice of appeal from the November 4, 1994 amended judgment and commitment order.

[1] The notice of appeal regarding the original judgment entered on October 7, 1994, was timely filed. The notice of appeal filed on December 30, 1994, for the amended judgment entered on November 4, 1994, was invalid. The motion to modify the amended sentence was a motion made for post conviction relief and that is not a motion which would extend the time for filing a notice of appeal under Ark. R. Crim. P. 36.9. Moreover, even if the motion to modify were a motion which could extend the time period for filing a notice of appeal, it would have been deemed denied on December 31, 1994, which means the notice of appeal filed on December 30, 1994, was premature. We, therefore, treat this motion for rule on the clerk as a motion for belated appeal with regard to the second notice of appeal and grant it and direct the Clerk of the Supreme Court to file the record in this matter.

A copy of this order will be sent to the Committee on Professional Conduct.
