

Troy MAYO v. STATE of Arkansas

CR 95-802

906 S.W.2d 285

Supreme Court of Arkansas
Opinion delivered September 18, 1995

1. APPEAL & ERROR — MOTION FOR RULE ON THE CLERK — ATTORNEY'S DUTY TO FILE RECORD ON TIME. — It is an attorney's duty to file the record on time; in the present case, the record was late because an order of extension was not entered before the period for filing the record had expired; at a minimum, appellant's attorney should have filed a partial record by the due date when it became apparent that the transcript would not be completed on time.
2. APPEAL & ERROR — MOTION FOR RULE ON THE CLERK — ATTORNEY DIRECTED TO FILE NEW MOTION AND AFFIDAVIT ACCEPTING RESPONSIBILITY. — Appellant's attorney was ordered to file within thirty days a motion and affidavit accepting full responsibility for not timely filing the transcript; upon filing, the motion will be granted.

Motion for Rule on the Clerk denied.

Roy C. Lewellen, for appellant.

No response.

PER CURIAM. Troy Mayo has filed this Motion for Rule on the Clerk through his attorney, Roy C. Lewellen. His attorney does not admit fault, but states that the court reporter was involved in an accident which caused a delay in preparation of the transcript.

The chronology of this appeal is as follows:

Judgment and Commitment Order Entered	12/8/94
Notice of Appeal and Designation of Record	1/6/95

Order for Extension of Time to prepare transcript to July 6, 1995	4/6/95
Transcript completed and given to Circuit Clerk	7/7/95
Transcript tendered	7/10/95

Mr. Mayo attached a letter from the circuit clerk which stated that the court reporter was unable to complete the transcript until July 7, 1995 because she was involved in a car accident. However, this letter is dated July 14, 1995, and is not stamped as received by the attorney until July 17, 1995. Thus, although the transcript may have been late because of the court reporter's misfortune, it appears that this letter was obtained after the tendered record was rejected by the Clerk's office.

[1] It is an attorney's duty to file the record on time. In this case the record was late because an order of extension was not entered before the period for filing the record had expired. See Ark. R. App. P. 5. At a minimum, Mr. Mayo's attorney should have filed a partial record by the July 6 due date when it became apparent that the transcript would not be completed on time.

[2] The appellant's attorney shall file within thirty days from the date of this per curiam a motion and affidavit in this case accepting full responsibility for not timely filing the transcript, and upon filing same, the motion will be granted and a copy of the opinion will be forwarded to the Committee on Professional Conduct. *Harkness v. State*, 264 Ark. 561, 572 S.W.2d 835 (1978).

Motion denied.