

Anthony McCRANEY v. STATE of Arkansas

RC 89-20

772 S.W.2d 597

Supreme Court of Arkansas
Opinion delivered July 3, 1989

1. APPEAL & ERROR — RESPONSIBILITY OF ATTORNEY TO SEE THE RECORD AND TRANSCRIPT ARE TIMELY FILED. — It is the responsibility of the attorney of record to see that the record and transcript are timely filed; counsel must anticipate problems of time and be prepared to do all acts necessary to perfect an appeal, and it is no excuse or good cause that a judge, clerk, or reporter miscalculates

- the time or fails to file an order on time.
2. APPEAL & ERROR — MOTION FOR RULE ON THE CLERK FILED WITHOUT PROPER ACCOMPANYING AFFIDAVIT. — Where motion for rule on the clerk was filed without the proper accompanying affidavit, the motion was denied without prejudice to file a proper motion.

Motion for Rule of the Clerk; denied.

Robert L. Scull III, for appellant.

No response.

PER CURIAM. Robert S. Scull filed a motion for a rule on the clerk on behalf of his client, Anthony McCraney. However, the motion is not accompanied by a proper affidavit as required by A.R.Cr.P. Rule 36.9. See our per curiam of February 5, 1979, reported at 265 Ark. 964, and the case of *Melton v. State*, 273 Ark. 474, 620 S.W.2d 946 (1981). It is the responsibility of the attorney of record to see that the record and transcript are timely filed. *Nelson v. State*, 272 Ark. 287, 613 S.W.2d 598 (1981).

“It is the duty of counsel, not the judge, not the clerk, not the reporter, to perfect an appeal.” See *Finley v. State*, 281 Ark. 38, 661 S.W.2d 358 (1983). It is solely the responsibility of counsel to see that orders are entered on time. “Counsel must anticipate problems of time and be prepared to do all acts necessary to perfect an appeal and it is no excuse or good cause that a judge, clerk or reporter miscalculates the time or fails to file an order on time.” *Finley*, supra. See also *Smith v. State*, 275 Ark. 416, 639 S.W.2d 22 (1982).

The motion for a rule on the clerk is denied without prejudice to file a proper motion.