

Clyde JOHNSON *v.* STATE of Arkansas

CR 00-815

33 S.W.3d 139

Supreme Court of Arkansas
Opinion delivered December 14, 2000

CONTEMPT — ORDER ISSUED. — The supreme court held an attorney in contempt of court for failing to perfect the present appeal and, based on the case in question and the attorney's past history of failing to lodge records after filing notices of appeal, imposed a fine.

Contempt Order issued.

Davis Loftin, for appellant.

No response.

PER CURIAM. On January 31, 1991, judgment was entered in the Circuit Court of Crittenden County which reflected that Clyde Johnson had been found guilty by a jury of aggravated robbery and sentenced as a habitual offender to fifty years' imprisonment. Mr. Johnson's appointed attorney, Davis Loftin, filed a timely notice of appeal from the judgment on February 28, 1991. The appeal was not perfected, and Mr. Johnson sought by *pro se* motion to proceed with a belated appeal of the judgment, which we granted on November 16, 2000. *See Johnson v. State*, 342 Ark. 709, 30 S.W.3d 715 (2000) (*per curiam*). In the same *per curiam*, we issued an order for Mr. Loftin to appear before this court and show cause why he should not be held in contempt for failing to perfect the Johnson appeal.

On December 7, 2000, Mr. Loftin appeared before this court and pled guilty to contempt of court. He offered in mitigation that Mr. Johnson never told him that he wanted to pursue the appeal. Mr. Loftin recognized his obligation to perfect the appeal but did not believe that Mr. Johnson wanted him to appeal.

[1] We hold that Mr. Loftin is in contempt of court. We note that this is not the first time that Mr. Loftin has been held in contempt by this court for failure to perfect an appeal. *See Jones v. State*, 318 Ark. 44, 883 S.W.2d 452 (1994) (*per curiam*) (fined \$250 for contempt). We further note that neither in this case nor in *Jones*

v. State, supra, did Mr. Loftin move to withdraw as counsel. Therefore, he remained attorney of record and was responsible for representing Mr. Johnson in his appeal. See Ark. R. App. P.—Crim. 16.

Based on this case and Mr. Loftin's past history of failing to lodge records after filing notices of appeal, we fine him \$500.

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