

Jacinto HENDERSON v. STATE of Arkansas

CR 01-616

45 S.W.3d 846

Supreme Court of Arkansas
Opinion delivered June 21, 2001

1. APPEAL & ERROR — MOTION FOR RULE ON CLERK — WHEN GRANTED. — The supreme court will grant a motion for rule on clerk when the attorney admits that the record was not timely filed due to an error on his part; a statement that it was someone else's fault or no one's fault will not suffice.
2. APPEAL & ERROR — MOTION FOR RULE ON CLERK — DENIED. — Where the attorney did not admit fault on his part, but instead implied fault on the part of the court reporter and the clerk of the lower court, his motion for rule on the clerk was denied.
3. APPEAL & ERROR — MOTION FOR RULE ON CLERK — WILL BE GRANTED WHEN ATTORNEY ACCEPTS FULL RESPONSIBILITY. — Should the appellant's attorney file, within thirty days from the date of this per curiam, a motion and affidavit accepting full responsibility for not timely filing the transcript, the motion for rule on the clerk will be granted.

Motion for Rule on Clerk; denied.

Q. *Byrum Hurst, Jr.*, for appellant.

No response.

PER CURIAM. Jacinto Henderson, by his attorney, Q. Byrum Hurst, Jr., has filed a motion for rule on the clerk. The motion admits that the record was not timely filed and that it was no fault of the appellant.

[1, 2] This court has held that we will grant a motion for rule on clerk when the attorney admits that the record was not timely filed due to an error on his part. *See, e.g., Tarry v. State*, 288 Ark. 172, 702 S.W.2d 804 (1986). Here, the attorney does not admit fault on his part, but instead implies fault on the part of the court reporter and the clerk of the lower court. We have held that a statement that it was someone else's fault or no one's fault will not suffice. *Clark v. State*, 289 Ark. 382, 711 S.W.2d 162 (1986). Therefore, appellant's motion must be denied.

[3] 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.

The present motion for rule on the clerk is denied.