

Myron Kent GEORGE v. STATE of Arkansas

CR 01-871

53 S.W.3d 526

Supreme Court of Arkansas
Opinion delivered September 13, 2001

1. APPEAL & ERROR — TENDERED RECORD INCOMPLETE — CERTIFICATION BY AFFIDAVIT IMPOSSIBLE. — Where the tendered partial record did not include the transcribed trial testimony, the supreme court could not allow it to be filed with the clerk of the court because the attorneys of record could not certify by affidavit that the record was “true, accurate, and complete.”
2. APPEAL & ERROR — MOTION FOR RULE ON CLERK — DENIED. — Where the tendered record was not complete, the circuit judge was directed to take whatever actions necessary to secure prompt certification of a full and complete record for appeal; the supreme court denied appellant’s motion for rule on the clerk.

Motion for Rule on the Clerk; denied.

Appellant, pro se.

No response.

PER CURIAM. Appellant Myron Kent George moves the court for a rule on clerk and shows this court as follows. Court Reporter Nila Keels was not a certified court reporter at the time of the jury trial in this matter held in Greene County on January 22 and 23, 2001. Following the trial, George was found guilty as an accomplice to manufacturing methamphetamine and possession of the same substance. A notice of appeal was filed February 9, 2001. Thereafter, a motion was filed for a 90-day extension of time for filing the record, and an order was entered extending the time until August 9, 2001. As of this writing, no transcription of the trial testimony has been filed.

On August 8, 2001, George tendered to the Clerk of the Supreme Court the Greene County Circuit Clerk's record in this case without the transcription of testimony. On that same date, he filed the motion now before us requesting that the partial record from the Greene County Circuit Clerk's office be filed to comply with the August 9, 2001 deadline. The State does not object to George's motion but urges this court to follow the same procedure as it did in *Mitchell v. State*, 345 Ark. 359, 45 S.W.3d 846 (2001) (*per curiam*), where we required the attorneys of record to certify to the Supreme Court Clerk by affidavit that the record was "true, accurate, and complete." *Mitchell*, 345 Ark. at 361, 45 S.W.3d at 848.

[1, 2] We first observe that there is no way that the *Mitchell* procedure can be followed in this case because the tendered record is not complete in that it does not include the transcribed trial testimony. It is imperative that this testimony be transcribed immediately. We direct Judge Victor Hill of the Greene County Circuit Court to take whatever actions are necessary to secure the prompt certification of a full and complete record for appeal in this matter. See *Ross v. State*, 344 Ark. 623, 42 S.W.3d 483 (2001) (*per curiam*).

Motion denied.