

Edmundo ROGERS v. Andy LEE, Sheriff, Benton County,
and Gene Drake, Benton County Jail Supervisor

01-824

61 S.W.3d 140

Supreme Court of Arkansas
Opinion delivered November 9, 2001

TOM GLAZE, Justice, dissenting. On July 25, 2001, our court issued its mandate granting expedited consideration for Edmundo Rogers's motion to stay "conditioned upon continued payment of child support and the \$30,000 supersedeas bond remaining in effect." On July 27, 2001, we then granted Rogers's habeas corpus petition to release him from the Benton County Jail. Instead of complying with the supreme court's mandate, the trial court found that, because Rogers was in contempt for failing to pay alimony to his wife, the trial court incarcerated Rogers for contempt for willful nonpayment of alimony, and concluded the supreme court's earlier mandate regarding child support did not pertain.

Clearly, the record shows Rogers has complied with the supreme court's mandate concerning the payment of child support. Rogers's challenge to the alimony award is on appeal and our court should unquestionably stay enforcement of the trial court's alimony award and finding of contempt. This court's failure to stay the proceeding below leaves Rogers no remedy to challenge his jail sentence until after he has fully served it. Fundamental due process is wholly ignored by this court's refusal to grant a stay and, at least, Rogers's temporary release from jail.

I would grant Rogers's petition and stay until his case can be heard on the merits.