

Shawn DWILLS *v.* STATE of Arkansas

CR 01-1289

62 S.W.3d 359

Supreme Court of Arkansas  
Opinion delivered December 13, 2001

APPEAL & ERROR — MOTION FOR RULE ON CLERK — GOOD CAUSE FOR GRANTING. — An admission by an attorney for a criminal defendant that the record was tendered late due to a mistake on his part is good cause to grant a motion for rule on the clerk.

Motion for Rule on the Clerk; granted.

*Thurman Ragar, Jr.*, for appellant.

No response.

**P**ER CURIAM. Appellant Shawn Dwills has filed a motion for rule on the clerk. The motion reflects that the judgment and commitment order was filed on April 23, 2001, and that the notice of appeal was timely filed on April 27, 2001. An amended judgment and commitment order was filed on April 30, 2001. An order extending the time to lodge the record on appeal was entered on July 30, 2001, more than ninety days after the first notice of appeal was filed. The transcript was not tendered until November 19, 2001.

Under Ark. R. App. P.—Civ. 5(a), the record on appeal must be filed with this court's clerk within ninety days from the filing of the first notice of appeal. The time for filing the record may be extended, provided that an order of extension is issued within the original ninety-day period. See Ark. R. App. P.—Civ. 5(b). An order of extension was entered in this case, but it was not timely under Rule 5(b).

[1] Appellant's attorney, Thurman Ragar Jr., admits responsibility for miscalculating the time to file the record on appeal. We find that such error, admittedly made by the attorney for a criminal defendant, is good cause to grant the motion. *Jones v. State*, 338 Ark. 29, 992 S.W.2d 85 (1999) (*per curiam*) (citing *Tarry v. State*, 288 Ark. 172, 702 S.W.2d 804 (1986) (*per curiam*)).

The motion for rule on the clerk is, therefore, granted. A copy of this opinion will be forwarded to the Committee on Professional Conduct. See *In Re: Belated Appeals in Criminal Cases*, 265 Ark. 964 (1979) (*per curiam*).

IMBER, J., not participating.