

Carl Gene MCGHEE v. STATE of Arkansas

CR 02-353

74 S.W.3d 627

Supreme Court of Arkansas
Opinion delivered May 9, 2002

APPEAL & ERROR — MOTION FOR BELATED APPEAL OR MOTION FOR
RULE ON CLERK — REMANDED. — The supreme court remanded
the matter to the trial court to determine why the record was not
timely filed and why a motion for rule on clerk was not pursued.

Motion for Belated Appeal or Motion for Rule on the Clerk;
remanded.

Scott Adams, for appellant.

No response.

PER CURIAM. On May 6, 1999, movant Carl Gene
McGhee was convicted of various drug offenses. On
May 25, 1999, his attorney retained for his appeal, Scott Adams,

filed a notice of appeal. Three extensions of time were then granted for filing the record, with the ultimate deadline for filing the record being September 30, 1999. McGhee's record was tendered for filing on October 4, 1999. The Supreme Court clerk refused to file the record because it was late. No motion for rule on clerk was filed on McGhee's behalf. On December 20, 1999, the record was returned to McGhee's counsel, Scott Adams. Nothing further apparently was done on the matter.

On April 11, 2002, McGhee with new counsel filed a motion for Belated Appeal or motion for Rule on Clerk and tendered a record for his appeal for a second time. His new counsel argues on McGhee's behalf that though the record was not timely filed under Ark. R. App. P.—Crim. 2(e), this court should allow a belated appeal or lodging of the late record because McGhee was unaware his record had not been timely filed. McGhee files an affidavit in support of his contention.

[1] We remand this matter to the trial court to determine why the record was not timely filed and why a motion for rule on clerk was not pursued. We are further interested in learning why nothing has been done on this appeal by counsel, Scott Adams, for two and a half years. When we receive the trial court's findings, we will decide the motion pending before us.