

Willie TILLMAN, Jr. v. STATE of Arkansas

CR 04-1375

213 S.W.3d 626

Supreme Court of Arkansas
Opinion delivered September 22, 2005

APPEAL & ERROR — ADDENDUM INSUFFICIENT — REBRIEFING ORDERED
— Where the addendum did not contain a timely notice of appeal, and was therefore insufficient under Ark. R. Sup. Ct. 4-2(a)(8), appellant was ordered to submit a substituted brief containing a revised addendum including the timely notice of appeal, pursuant to Rule 4-2(b)(3), if appellant fails to file a complying brief within the prescribed time, the judgment may be affirmed for noncompliance with the rule.

Appeal from Lonoke Circuit Court, *Lance Lamar Hanshaw*, Judge, rebriefing ordered.

Williams, Khoury, & Higdon, PLLC, for appellant.

Mike Beebe, Att’y Gen., by: *Brad Neuman*, Ass’t Att’y Gen., for appellee.

PER CURIAM. Appellant Willie Tillman, Jr., appeals the June 3, 2004, judgment of the Lonoke County Circuit Court convicting him of first-degree murder in the shooting death of Deon Youngblood. Because appellant has submitted a brief with an addendum that is insufficient under Ark. R. Sup. Ct. 4-2(a)(8), we order rebriefing.

Supreme Court Rule 4-2(b)(3) explains the procedure to be followed when an appellant has failed to supply this court with a sufficient brief. The rule provides:

Whether or not the appellee has called attention to deficiencies in the appellant’s abstract or Addendum, the Court may address the question at any time. If the Court finds the abstract or Addendum to be deficient such that the Court cannot reach the merits of the case, or such as to cause an unreasonable or unjust delay in the disposition of the appeal, the Court will notify the appellant that he or she will be afforded an opportunity to cure any deficiencies, and has fifteen days within which to file a substituted abstract, Addendum, and brief, at his or her own expense, to conform to Rule

4-2(a)(5) and (8). Mere modifications of the original brief by the appellant, as by interlineation, will not be accepted by the Clerk. Upon the filing of such a substituted brief by the appellant, the appellee will be afforded an opportunity to revise or supplement the brief, at the expense of the appellant or the appellant's counsel, as the Court may direct. If after the opportunity to cure the deficiencies, the appellant fails to file a complying abstract, Addendum and brief within the prescribed time, the judgment or decree may be affirmed for noncompliance with the Rule

Ark. Sup. Ct. R. 4-2(b)(3).

In the present case, the addendum does not contain a timely notice of appeal. Apparently, appellant filed two notices of appeal in this case, a notice of appeal filed on July 6, 2004, and a notice of appeal filed on July 19, 2004. The July 6 notice of appeal is timely; however, appellant failed to include a copy of this notice of appeal in his addendum.

[1] We hereby order appellant to submit a substituted brief that contains a revised addendum that includes the timely notice of appeal. Appellant is directed to file the substituted brief within fifteen days from the entry of this order. Pursuant to Rule 4-2(b)(3), if appellant fails to file a complying brief within the prescribed time, the judgment may be affirmed for noncompliance with the rule.

After service of the substituted brief, the State shall have an opportunity to file a responsive brief in the time prescribed by the Supreme Court Clerk, or to rely on the brief which it has previously filed in this appeal.

Rebriefing ordered