

JIMMIE MCKINE *v.* STATE

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413 S. W. 2d 860

Opinion delivered April 4, 1967

[Rehearing denied May 15, 1967.]

APPEAL & ERROR—DECISIONS REVIEWABLE—STATUTORY PROVISIONS.—
 Appeal could not be considered on its merits in absence of circuit court order granting the appeal which is required by statute. [Ark. Stat. Ann. §§ 43-2708 and 43-2709 (Repl. 1964).]

Appeal from Sebastian Circuit Court, *Paul Wolfe*, Judge; dismissed.

Floyd G. Rogers, for appellant.

Joe Purcell, Attorney General; *Don Langston*, Asst. Atty. Gen., for appellee.

CARLETON HARRIS, Chief Justice. Jimmie McKine, appellant herein, was convicted of the charge of Driving While Intoxicated (second offense) in the Municipal Court of the City of Fort Smith, Arkansas. He appealed to the Circuit Court of Sebastian County (Fort Smith District), and was found guilty by a jury, sentenced to ten days in the County Jail, fined \$250.00, and his driver's license suspended for a period of one year. From the judgment so entered, McKine brings this appeal.

We are unable to consider this appeal on its merits, for though the transcript has been thoroughly explored, no order granting the appeal by the Circuit Court is shown. This is a requirement of the law. Ark. Stat. Ann. §§ 43-2708 and 43-2709 (Repl. 1964). See also *McConnell v. State*, 227 Ark. 988, 302 S. W. 2d 805.

It might be added, however, that a majority of the court would also affirm the case on the merits.

Appeal dismissed.