

James Lee JACKSON *v.* STATE of Arkansas

CR 04-854

205 S.W.3d 137

Supreme Court of Arkansas
Opinion delivered March 10, 2005

1. MOTIONS — MOTION TO FILE BELATED CORRECTED BRIEF — GRANTED. — Where the brief tendered by counsel was rejected because it had no reference to the abstract or addendum in the statement of the case or argument, and there was no statement of the case, and counsel again tendered appellant's brief, but it was again rejected because there was no reference to the abstract or addendum in the statement of the case or argument, counsel's motion to file a belated corrected brief was granted.
2. APPEAL & ERROR — EXTENSIONS PREVIOUSLY GRANTED — NO FURTHER EXTENSIONS CONSIDERED — Since appellant's counsel missed two final deadlines to file an adequate appellant's brief, no other motions to file a corrected brief and no further requests for an extension of time to file appellant's brief will be considered by the court.
3. CONTEMPT — SHOW CAUSE — ORDERED. — Appellant's counsel was ordered to appear and show cause why he should not be held in contempt for failure to comply with the orders of the supreme court.

Motion to File Belated Corrected Brief, granted.

William M. Howard, for appellant.

No response.

PER CURIAM. William M. Howard, Jr. appears by motion in this appeal seeking to be allowed to file a belated corrected brief in this case.

Appellant was represented below by Joseph P. Mazzanti III, a public defender, who filed the notice of appeal and arranged for the preparation of the record. Appellant's family contacted Mr. Howard and hired him to represent appellant on appeal. Mr. Howard lodged the record in this court on August 6, 2004, and both Mr. Howard and Mr. Mazzanti were listed as attorneys for

appellant. Appellant's brief was due on September 15, 2004. On September 14, 2004, Mr. Howard filed a motion for extension of time to file appellant's brief, and the court granted an extension to October 15, 2004.

Because no motion to substitute counsel and no motion to be relieved as counsel was filed in this case, Mr. Howard, on September 24, 2004, filed a motion seeking to be substituted as attorney of record and to have Mazzanti relieved as counsel on the appeal. The court denied the motion without prejudice, stating that the court could not determine whether appellant had been consulted regarding the change in counsel and whether appellant desired to be represented by different counsel. The motion did not state the reasons for the attempted withdrawal as required by our rules of procedure and case law. The court instructed Mr. Mazzanti to file a petition to withdraw, containing a statement of the reasons for withdrawing, and demonstrating that the interest of justice or other sufficient cause exists.

On October 25, 2004, Mazzanti filed a proper motion to withdraw as counsel, and, on November 5, 2004, Howard again filed a motion to be substituted as counsel. Both motions were granted on November 11, 2004, briefing again commenced, and appellant's brief became due on December 13, 2004.

On December 10, 2004, Howard requested another extension of time to file appellant's brief, and on December 15, 2004, the court granted an extension to January 12, 2005. On January 11, 2005, Howard requested a third brief extension, and the court, on January 13, 2005, granted a *final extension* to January 27, 2005. On January 27, 2005, appellant's brief was tendered, but was rejected. The court found that the brief had no reference to the abstract or addendum in the statement of the case or argument, and there was no statement of the case. Howard was notified of the need to file a motion for time to correct the brief, which he did on January 31, 2005, and, on February 1, 2005, the court allowed a fourth extension (*designated final*) to February 8, 2005. On February 8, 2005, Howard again tendered appellant's brief, but it was again rejected because there was no reference to the abstract or addendum in the statement of the case or argument. Again, Howard was notified that a motion to file belated corrected brief was required, and that motion is now before this court.

[1-3] We grant motion to file a belated corrected brief. Appellant's brief shall be filed within ten days of this per curiam. Since Mr. Howard has missed two final deadlines to file an

adequate appellant's brief, no other motions to file a corrected brief and no further requests for an extension of time to file appellant's brief will be considered. In addition, Mr. Howard is ordered to appear on March 24, 2005, at 9:00 a m., to show cause why he should not be held in contempt for failure to comply with the orders of this court. A copy of this per curiam is being forwarded to the Supreme Court Committee on Professional Conduct.
