

Kevin MCKENZIE a/k/a Keith Barrett *v.*
STATE of Arkansas

CR 03-775

189 S.W.3d 443

Supreme Court of Arkansas
Opinion delivered July 1, 2004

APPEAL & ERROR — MOTION FOR BELATED APPEAL TREATED AS MOTION FOR RULE ON CLERK — MOTION GRANTED. — Upon appellant's counsel being found in contempt of court and removed as attorney of record, appellant's new counsel filed a motion for belated appeal; however, where the record is not tendered in a timely fashion the proper remedy is a motion for rule on the clerk; thus, the supreme court treated appellant's motion as one for a rule on the clerk, and because good cause was shown to grant the motion for entry of appearance and motion for rule on the clerk, they were granted.

Motion for entry of appearance granted; motion for rule on the clerk granted.

W. Guy Kennan, for appellant.

Mike Beebe, Att'y Gen., by: *Jeffrey Weber*, Ass't Att'y Gen., for appellee.

PER CURIAM. On July 3, 2003, we stayed consideration of Mr. Gary Kennan's petition to file a belated appeal in this

case because the attorney asserting responsibility for the case, Mr. Charles Waldman, had not accepted responsibility for the untimely filing of the record. Mr. Waldman, who is neither licensed to practice law in the State of Arkansas nor admitted *pro hac vice*, made an effort to file the record in this case but the Clerk of the Court properly declined to accept the record.

[1] On this date, Mr. Waldman has been found guilty of contempt of court and has been removed as the attorney of record from this case. Mr. Kennan has filed a motion to file a belated appeal, however, when the record is not tendered in a timely fashion the proper remedy is a motion for a rule on the clerk. We will treat Mr. Kennan's motion as a motion for a rule on the clerk in this case. Accordingly, good cause is shown to grant Mr. Kennan's motion for entry of appearance and his motion for a rule on the clerk.
