

McALLISTER v. STATE.

Cr. 4427

199 S. W. 2d 751

Opinion delivered February 17, 1947.

Rehearing denied March 17, 1947.

CRIMINAL LAW—LACK OF BILL OF EXCEPTIONS.—Appellant having failed to complete the record by filing bill of exceptions until after the expiration of the time granted therefor, the Supreme Court is limited to a consideration of the record proper, and since no error appears on the face of the record, affirmance of the judgment follows.

Appeal from Sebastian Circuit Court, Ft. Smith District; *J. Sam Wood*, Judge; affirmed.

Franklin Wilder, for appellant.

Guy E. Williams, Attorney General, and *Arnold Adams*, Assistant Attorney General, for appellee.

ED. F. McFADDIN, Justice. On June 6, 1946, appellant was convicted of the crimes of burglary, and assault with intent to kill, and was sentenced to the penitentiary. On June 7, 1946, a motion for new trial was overruled, and his appeal prayed and granted, and his bond fixed and approved, and 58 days given for bill of exceptions.

On August 2, 1946, a certified copy of the judgment was filed in this court, and a writ of certiorari was issued to complete the record. In response to the writ, a skeleton transcript (without the evidence or bill of exceptions) was filed in this court on August 22, 1946. On the last-mentioned date appellant's present counsel was employed; and he has sought diligently to complete the record within the time allowed by statute, and the rules of this court, but has been unable to do so. The bill of exceptions was not filed here until September 19, 1946,

which was more than three months from the granting of the appeal.

The Attorney General moved to strike the bill of exceptions, and the motion was granted by this court on January 13, 1947, in an order reading: "Motion to strike bill of exceptions because of noncompliance with Rule 5-d and § 4236, Pope's Digest, is sustained."

With the bill of exceptions stricken, there is nothing before this court except the record. See *Foster v. State*, 128 Ark. 316, 194 S. W. 703. We find no errors on the face of the record; so the judgment of the circuit court is in all things affirmed.

HOLT, J., not participating.
