

IN THE MATTER OF Contempt of Counsel, Roger T.  
JEREMIAH

822 S.W.2d 392

Supreme Court of Arkansas  
Opinion delivered February 10, 1992

CONTEMPT — FAILURE TO FILE BRIEF IN TIMELY MANNER — SPECIAL MASTER APPOINTED. — Where counsel was ordered to appear and show cause why he should not be held in contempt for failing to file his brief in a timely manner; and where counsel appeared, tendered his brief, said he had a meritorious defense to the charge of contempt, and filed a motion to file a belated brief in support of his position, it was necessary to hold a hearing to determine whether or not a meritorious defense existed, and a master was appointed to make that determination.

Appointment of a Master.

*Roger T. Jeremiah, pro se.*

PER CURIAM. On October 11, 1990, the appellant, Richard Lee Mitchell, was convicted in the Circuit Court of Crawford

County, Arkansas, 12th District, of rape and sentenced to thirty-five years imprisonment. On November 8, 1990, appellant filed a motion for a new trial which the trial court denied on January 29, 1991. On February 1, 1991, the appellant appealed from his conviction judgment and denial of his motion for new trial. Roger T. Jeremiah was appellant's counsel at trial and is also attorney of record in this appeal. *Mitchell v. State*, CR 91-150.

Appellant's transcript was timely filed with the clerk on May 2, 1991. As of January 21, 1992, no brief had been tendered or filed on behalf of the appellant with the clerk of this court. As a result, we issued a per curiam citing counsel, Roger T. Jeremiah, to appear before this court on Monday, February 3, 1992, and show cause why he should not be held in contempt for failing to file his brief in a timely manner.

Counsel, Roger T. Jeremiah, appeared before the court on February 3, 1992, and advised the court that he had tendered his brief this date and that he had a meritorious defense to the charge of contempt. In addition, Mr. Jeremiah filed with the clerk, a motion to file a belated brief in support of his position.

[1] It is necessary for a hearing to be held to determine whether or not counsel has a meritorious defense to the charge of failing to file his brief in a timely manner. We appoint the Honorable Perry Whitmore as a Master to conduct the hearing. The Master is to assume that counsel timely filed the transcript on this case on May 2, 1991, and that appellant's brief was tendered on February 3, 1992. Counsel will have the burden of proving, by a preponderance of the evidence, that he has meritorious reasons for not filing the appellant's brief when due as prescribed by the Rules of Supreme Court, Rule 11. The Master shall conduct a hearing and make findings of fact. Upon receiving the findings of fact from the Master, we will make a decision as to whether or not counsel, Roger T. Jeremiah should be held in contempt.