

Cleotis WILLIS v. STATE of Arkansas

CR 95-1218

912 S.W.2d 430

Supreme Court of Arkansas  
Opinion delivered January 8, 1996

**APPEAL & ERROR — ATTORNEY ADMITTED NEGLIGENCE IN NOT HAVING RECORD FILED ON TIME — MOTION FOR RULE ON CLERK GRANTED.** — Where appellant's attorney admitted that he was negligent in not having the record filed on time, the supreme court granted appellant's motion for rule on the clerk.

Motion for Rule on the Clerk; granted.

*Don G. Gillaspie*, for appellant.

No response.

**PER CURIAM.** On June 12, 1995, Cleotis Willis filed a notice of appeal from his criminal conviction. Rule 5(a) of the Arkansas Rules of Appellate Procedure provides that a record shall be filed with this Court within 90 days of the filing of the first notice of appeal unless the time is extended by the trial court. Subsection (b) of the Rule provides that the trial court

may extend the time for filing the record with this Court if the order of extension is entered before the expiration of the original filing period.

On September 11, 1995, which was the 90th day from the date the notice of appeal was filed, the Trial Court signed an order extending to October 11, 1995, the time for filing the record. Mr. Willis's counsel, Donnie Gillaspie, attempted to lodge the record with this Court on October 11, 1995. The Clerk refused the record because the Trial Court had not acted to extend the time for lodging the record within the 90-day period prescribed by Rule 5. Mr. Gillaspie contends that, in view of the fact that both he and the circuit clerk's office received facsimile copies of the Trial Court's order extending the time on September 11, 1995, compliance with the Rule was had. Rule 5(b) provides, however, that the order of extension must be "entered" within the 90-day period. The order was not entered and file marked by the Circuit Clerk until September 12, 1995; therefore, it was not timely.

[1] Mr. Gillaspie has admitted, as an alternative to his argument that the record was lodged in a timely manner, that he was negligent in not having the record filed on time. The motion for rule on the clerk is granted, and a copy of this opinion will be forwarded to the Committee on Professional Conduct. *Harkness v. State*, 264 Ark. 561, 572 S.W.2d 835 (1978).