

Kenny TRAVIS *v.* STATE of Arkansas

CR 08-1320

289 S.W.3d 474

Supreme Court of Arkansas
Opinion delivered December 11, 2008

APPEAL & ERROR — GOOD CAUSE WAS SHOWN FOR FILING OF BELATED APPEAL. — Appellant demonstrated good cause for his failure to file a timely notice of appeal; appellant stated that he never received notice that his Rule 37 petition had been denied or that he ever received a copy of that order.

Motion for Belated Appeal, granted.

Craig Lambert, for appellant.

No response.

PER CURIAM. Appellant Kenny Travis, by and through his counsel Craig Lambert,¹ has filed a motion for a belated appeal from the denial of his pro se petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37. Appellant was convicted of capital murder and sentenced to a term of life imprisonment on August 11, 2006. He filed a timely petition for postconviction relief on January 18, 2008. The Mississippi County Circuit Court entered an order on February 20, 2008, denying the Rule 37 petition.

Appellant filed the instant motion on November 12, 2008, averring that it was only after recently retaining Mr. Lambert to represent him that he discovered that the trial court had denied his petition for postconviction relief. Attached to his motion is an affidavit wherein Appellant states that he never received notice that his petition had been denied or that he ever received a copy of that order. The State has not filed a response.

[1] This court recently addressed a similar situation in *Hampton v. State*, 374 Ark. 527, 288 S.W.3d 643 (2008) (per curiam), and granted the motion for belated appeal because good cause was established for doing so. See also *Rutledge v. State*, 355

¹ Appellant retained Mr. Lambert to represent him in the present appeal, and Mr. Lambert filed a motion for entry of appearance, which we granted this same day.

Ark. 499, 139 S.W.3d 518 (2003) (per curiam). In *Hampton*, the appellant averred that he never received notice of the denial of his petition for postconviction relief, and the State did not file a response. As a result, this court concluded that there was good cause to grant the motion as the State's failure to respond was tantamount to a determination that the State could not demonstrate that the circuit clerk promptly notified the appellant of the court's order. Likewise, in the present matter, Appellant has demonstrated good cause for his failure to file a timely notice of appeal, and we grant his motion for belated appeal.

Motion granted.
