

Kenneth Dana BREWTON *v.* STATE of Arkansas

CR. 08-1042

290 S.W.3d 605

Supreme Court of Arkansas
Opinion delivered January 15, 2009

MOTIONS — MOTION FOR RULE ON CLERK — TREATED AS MOTION FOR BELATED APPEAL AND GRANTED WHERE ATTORNEY ADMITTED FAULT FOR FAILING TO TIMELY FILE APPELLANT'S BRIEF. — A criminal appellant's belated brief will be accepted to prevent an appeal from being aborted; however, good cause must be shown to grant the motion; here, appellant's attorney accepted full responsibility and admitted fault for failing to timely file appellant's brief; accordingly, the motion for rule on clerk was treated as a motion for belated appeal and granted.

Motion for Rule on Clerk; treated as Motion for Belated Appeal and granted.

David L. Dunagin, for appellant

No response.

PER CURIAM. Appellant Kenneth Dana Brewton, by and through his counsel David L. Dunagin, moves this court for leave to file a belated brief.¹ Brewton's brief was due in this court on October 14, 2008. After no brief was filed, the State filed a motion to dismiss on December 8, 2008. Thereafter, Brewton tendered his brief and filed the instant motion requesting to file the belated brief.

We will accept a criminal appellant's belated brief to prevent an appeal from being aborted. See *Brown v. State*, 373 Ark. 453, 284 S.W.3d 481 (2008) (per curiam). However, good cause must be shown to grant the motion. See *Strom v. State*, 356 Ark. 224, 147 S.W.3d 689 (2004) (per curiam) (holding that appellate counsel's admitted failure to timely file the brief constituted good cause to grant motion for belated brief).

[1] Here, Brewton's attorney accepts full responsibility and admits fault for failing to timely file Brewton's brief. Accordingly, we grant the motion to file a belated brief and refer the matter to the Committee on Professional Conduct.

¹ Appellant's motion is captioned as one for rule on clerk, but we will treat it as a motion for belated brief.