

SUTTON v. LITTLE ROCK.

Cr. 3962

Opinion delivered November 4, 1935.

1. MANDAMUS—JURISDICTION.—The Supreme Court, on appeal from a conviction of violating a municipal ordinance, has no jurisdiction to compel the stenographer of the circuit court to file, without expense to the accused, a transcript of his notes in the proceedings in the circuit court.
2. MANDAMUS—JURISDICTION.—Where the court stenographer refused to furnish a transcript of his notes in a criminal case in the circuit court, the remedy of the accused was an application for mandamus in the circuit court.

Appeal from Pulaski Circuit Court, First Division;
Abner McGehee, Judge; rehearing denied.

John F. Clifford and *S. W. Trimble*, for appellant.

PER CURIAM. Appellant was duly convicted in the municipal court of Little Rock for the violation of a city ordinance, and appealed to the circuit court of Pulaski County, whereupon trial to a jury he was again convicted and fined in the sum of \$500. Copies of the judgments have been duly filed in this court as a basis for appeal, but no bill of exceptions has been filed for the reasons hereinafter stated.

On a previous day of this term we had under consideration appellant's motion for a writ of certiorari or mandamus or some other appropriate writ, requiring the circuit clerk, the circuit judge or the stenographer of the Pulaski Circuit Court to make and furnish without cost a bill of exceptions for review in this court on appeal. Neither the circuit clerk, the circuit judge nor the stenographer were made parties or appeared in this court in response thereto, therefore upon due consideration the prayer of said motion was denied without written opinion. We are now asked by petition for rehearing

to review our previous finding, and to now grant the appropriate writ. The original petition shows that the circuit court stenographer has refused to prepare and file a transcription of his notes of the proceedings appealed from by appellant; therefore a writ of certiorari against the clerk, even if he were before the court, would be unavailing, and we expressly held in *Ex parte Whitley*, 113 Ark. 372, 168 S. W. 144, that this court was without power to compel a circuit court stenographer to prepare and file a transcription of his notes of the proceedings reported by him in the circuit court. Therefore, were the stenographer a party to this proceeding, we would be without power to compel a transcription or filing of such transcription. Appellant's only remedy in this case is by mandamus in the circuit court and against the stenographer thereof to compel the stenographer to prepare and file a transcription of the proceedings had and done in the cause, and, since no such proceeding is before us for review, we pretermit any discussion of the merits of appellant's contentions.

The petition for rehearing will therefore be denied.