

Cleotis WILLIS *v.* STATE of Arkansas

CR 95-1218

942 S.W.2d 252

Supreme Court of Arkansas  
Opinion delivered April 14, 1997

MOTIONS — MOTION TO DISMISS APPEAL DENIED — MOTION TO FILE BELATED BRIEF GRANTED. — The State's motion to dismiss the appeal due to the failure of appellant to file a brief was denied; appellant's motion to file a belated brief was granted where appellant's counsel recited a personal medical problem as the cause of his failure to file the brief and indicated that the problem had been resolved and that he would be able to file a brief within ten days or two weeks.

Motion to File Belated Brief; granted. Motion to Dismiss; denied.

*Donny Gene Gillaspie*, for appellant.

*Winston Bryant*, Att'y Gen., by: *Kelly K. Hill*, Asst. Att'y Gen., for appellee.

PER CURIAM. On June 12, 1995, Cleotis Willis filed a notice of appeal from a criminal conviction. The record was not filed in a timely manner with this Court. On January 8, 1996, we granted a motion for rule on the clerk based upon the admission of fault by Donny Gene Gillaspie, Mr. Willis's counsel, in failure to tender the record on time.

On January 8, 1996, Mr. Gillaspie filed a motion to complete the record which was granted on January 29, 1996, and the case was remanded for that purpose to the Trial Court. By letter of March 25, 1996, the Clerk of this Court inquired of Mr. Gillaspie as to the status of the case. The Clerk's record indicates that Mr. Gillaspie telephoned on April 8, 1996, to inform the Clerk that Mr. Willis had been declared indigent and that the record had been ordered. On August 20, 1996, the Clerk again inquired by letter as to the status of the case. Our Clerk's record contains letters from the Trial Court and his Court Reporter indicating

that further delay was caused by inability of the Reporter to produce the record in a timely manner.

By letter of February 18, 1997, the Clerk informed Mr. Gillaspie that the record had been filed on December 23, 1996, but that a brief for Mr. Willis, which was due February 1, 1997, had not yet been filed. The Clerk's record contains no response from Mr. Gillaspie.

On March 10, 1997, the State moved to dismiss the appeal due to the failure of Mr. Willis to file a brief. On March 19, 1997, Mr. Gillaspie responded on behalf of Mr. Willis asking that the State's motion to dismiss be denied and that he be allowed to file a belated brief. Mr. Gillaspie recited a personal medical problem as the cause of his failure to file the brief. He indicated that the problem had been resolved and he would be able to file a brief within ten days or two weeks.

[1] The State's motion to dismiss the appeal is denied.

We grant Mr. Willis's motion to file a belated brief. The brief will be due on May 12, 1997.