

Clarence MIXON *v.* STATE of Arkansas

CR 97-452

944 S.W.2d 829

Supreme Court of Arkansas
Opinion delivered May 12, 1997

1. APPEAL & ERROR — MOTION FOR RULE ON CLERK DENIED — COUNSEL DID NOT ADMIT FAULT. — Where appellant had filed a motion for rule on the clerk, but his attorney stated that the notice of appeal was filed prior to the entry of the judgment and commitment order and thus was of no effect, the supreme court denied the motion because counsel did not admit fault for filing the notice of appeal prematurely.
2. APPEAL & ERROR — MOTION FOR RULE ON CLERK — CONDITIONS FOR GRANTING. — Where an attorney concedes by affidavit that it was his fault that the notice of appeal was prematurely filed, or where other good cause is shown, then a motion for rule on the clerk will be granted.

Motion for Rule on the Clerk; denied.

John F. Stroud III, for appellant.

No response.

PER CURIAM. [1] The appellant, Clarence Mixon, has filed a motion for rule on the clerk. His attorney, John F. Stroud III, states that the notice of appeal was filed prior to the entry of the judgment and commitment order. Thus, under rules, the notice of appeal was of no effect. See *Profit v. State*, 326 Ark. 825, 933 S.W.2d 392 (1996). However, because counsel does not admit fault for filing the notice of appeal prematurely, we deny the motion.

[2] If the attorney will concede by affidavit that it was his fault that the notice of appeal was prematurely filed, or if other good cause is shown, then the motion will be granted. *Harkness v. State*, 264 Ark. 561, 572 S.W.2d 835 (1978). The attorney is given 30 days from issuance of this per curiam order to respond. If no response is received within that time, the motion will be treated as a request for a belated appeal and granted, and a copy of the order granting the motion will be forwarded to the Committee on Professional Conduct.

Motion denied.