

Jesse Dewayne WICKLIFFE v. STATE of Arkansas

TEN 96-108

952 S.W.2d 144

Supreme Court of Arkansas
Opinion delivered October 2, 1997

MOTIONS — NO ACTION TAKEN BY APPELLANT'S ATTORNEY SINCE TENDERING PARTIAL RECORD — MOTION TO DISMISS APPEAL GRANTED. — Where appellant's attorney had taken no action in the appeal since tendering the partial record on October 11, 1996, even though, on January 7, 1997, the Clerk of the supreme court advised appellant's attorney that a motion for rule on the clerk would be necessary to get the record filed and to proceed with the appeal and, on July 15, 1997, the supreme court's Office of the Criminal Justice Coordinator notified appellant that his attorney had not filed the appropriate motion requesting permission to proceed with the appeal, the supreme court found that appellant's failure to perfect the appeal in a timely manner was good cause to grant appellee's motion to dismiss appeal.

Motion to Dismiss Appeal; granted.

No response.

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

PER CURIAM. Appellee the State of Arkansas, by and through counsel, *Winston Bryant*, Attorney General, and *Kelly K. Hill*, Deputy Attorney General, has filed a motion to dismiss Appellant *Wickliffe's* appeal.

On April 23, 1996, the Pulaski County Circuit Court entered a judgment convicting appellant of simultaneous posses-

sion of drugs and firearms, possession of a controlled substance with intent to deliver, and possession of drug paraphernalia. On May 20, 1996, appellant filed a motion for new trial, which, by operation of law, was deemed denied on June 20, 1996. Ark. R. App. P.—Crim. 2(a)(3). However, the circuit court proceeded to enter a written order denying the motion for new trial on July 16, 1996.

Appellant filed a notice of appeal on July 12, 1996. On October 11, 1996, appellant tendered a partial record to this court for filing. The partial record did not contain appellant's motion for new trial, nor did it contain a notice of appeal filed after the motion for new trial was denied. Based upon the partial record as tendered by appellant, the Clerk of this court notified appellant's attorney that the record could not be filed because the notice of appeal was not timely.

By letter dated January 7, 1997, the Clerk of this court advised appellant's attorney that a motion for rule on the clerk would be necessary to get the record filed and to proceed with the appeal. By letter dated July 15, 1997, the court's Office of the Criminal Justice Coordinator notified appellant regarding the status of his appeal from the conviction on April 23, 1996. Specifically, appellant was advised that his attorney had not filed the appropriate motion requesting permission to proceed with the appeal.

Appellant's attorney has taken no action in the appeal since tendering the partial record on October 11, 1996.

[1] We find that appellant's failure to perfect this appeal in a timely manner is good cause to grant appellee's motion to dismiss appeal.

The motion is, therefore, granted.

A. Wayne Davis is also ordered to appear before this court on the 16th day of October, 1997, at 9:00 a.m. to show cause why he should not be held in contempt of this court for his failure to perfect appellant Wickliffe's appeal in a timely manner.