

Robin K. SCHLESIER v. STATE of Arkansas

CR 97-399

953 S.W.2d 575

Supreme Court of Arkansas
Opinion delivered October 9, 1997

APPEAL & ERROR — MOTION FOR REMAND TO TRIAL COURT GRANTED. — The court reporter's inability to submit the record of testimony constituted good cause to grant appellant's motion for remand to the trial court, pursuant to Ark. R. App. P.—Crim. 4 and Ark. R. App. P.—Civ. 6(d) & 6(e).

Motion for Remand to Trial Court; granted.

Wayne A. Gruber, for appellant.

No response.

PER CURIAM. Appellant Robin K. Schlesier, by his attorney, Wayne A. Gruber, has filed a motion for remand to the trial court.

On May 27, 1997, appellant filed a Petition for Writ of Certiorari to complete the record. By *Per Curiam* Order dated June 16, 1997, appellant's Petition for Writ of Certiorari was granted. The Writ of Certiorari was issued to the Monroe County Circuit Clerk and to the Court Reporter, Nila J. Keels, returnable on July 16, 1997.

On July 16, 1997, appellant filed a motion for extension of time and for further instruction. By *Per Curiam* Order dated September 11, 1997, appellant's motion for extension of time to file the record of testimony was granted and Nila J. Keels, court reporter, was cited to appear before this court on September 25, 1997, to show cause why she should not be held in contempt of

this court for her failure to comply in a timely manner with the command of the Writ of Certiorari issued on June 16, 1997.

Nila J. Keels appeared on September 25, 1997, entered a plea of not guilty, and requested a hearing. By *Per Curiam* Order dated October 9, 1997, this court appointed the Honorable Steele Hays as a master to conduct a hearing, make his findings of fact, and file them with the court. A decision regarding whether Nila J. Keels should be held in contempt will not be made by this court until the master files his findings of fact with the court.

As a result of appellant's inability to obtain a record of testimony from the court reporter, appellant seeks to remand this matter to the Monroe County Circuit Court to allow counsel to prepare a statement of the evidence or proceedings and to allow the trial court to settle the record, pursuant to Ark. R. App. P.—Crim. 4 and Ark. R. App. P.—Civ. 6(d) & (e). In support of his motion, appellant submits the unsworn affidavit of Nila J. Keels, in which she avers that the record of testimony in appellant's case on appeal has been lost since December, 1996, and that she has been unable to locate the record as of the date of the affidavit, March 21, 1997.

[1] We find that the court reporter's inability to submit the record of testimony is good cause to grant Appellant's motion for remand to the trial court, pursuant to Ark. R. App. P.—Crim. 4 and Ark. R. App. P.—Civ. 6(d) & (e).

The motion is, therefore, granted.