

Michael Shane DIGGS *v.* STATE of Arkansas

CR 97-1566

958 S.W.2d 303

Supreme Court of Arkansas
Opinion delivered February 5, 1998

APPEAL & ERROR — MOTION FOR RULE ON CLERK TREATED AS
MOTION FOR BELATED APPEAL — GOOD CAUSE FOR GRANTING.
— The supreme court will treat a motion for rule on the clerk as
one for belated appeal where counsel admits that the notice of
appeal was not timely filed due to a mistake on his part; such an
error, admittedly made by the attorney for a criminal defendant, is
good cause to grant the motion.

Motion for Rule on the Clerk Treated as Motion for Belated
Appeal; granted.

John F. Gibson, Jr., for appellant.

No response.

PER CURIAM. Appellant Michael Shane Diggs, by his attorney, has filed a motion for rule on the clerk.

On May 29, 1997, the Drew County Circuit Court entered a judgment convicting appellant of burglary and theft of property. On May 30, 1997, appellant filed a motion for new trial. Appellant's notice of appeal from the judgment of conviction was filed on June 25, 1997. Appellant's attorney failed to file a notice of appeal after the motion for new trial was deemed denied on June 30, 1997.

Although the notice of appeal from the judgment of conviction was filed in a timely manner, appellant's attorney, John F. Gibson, Jr., admits that a notice of appeal from the denial of appellant's motion for new trial was not filed in a timely manner due to a mistake on his part.

[1] We find that such error, admittedly made by the attorney for a criminal defendant, is good cause to grant the motion, which we will treat as a motion for belated appeal. *See Terry v. State*, 272 Ark. 243, 613 S.W.2d 90 (1981); *In Re: Belated Appeals in Criminal Cases*, 265 Ark. 964 (1979) (per curiam).

The motion for belated appeal is, therefore, granted. A copy of this opinion will be forwarded to the Committee on Professional Conduct.