

Edwin G. DIEHL *v.* STATE of Arkansas

CR 98-304

962 S.W.2d 369

Supreme Court of Arkansas
Opinion delivered April 9, 1998

APPEAL & ERROR — MOTION FOR BELATED APPEAL GRANTED. —

Where appellant's attorney assumed responsibility for failing to verify that the judgment and commitment order had been filed prior to the filing of the notice of appeal, the supreme court granted appellant's motion for belated appeal.

Motion for Belated Appeal; granted.

Gene O'Daniel, for appellant.

No response.

PER CURIAM. Appellant Edwin G. Diehl has filed a motion for belated appeal. Appellant was convicted on August 11, 1997, of driving while intoxicated, but he was not formally sentenced until September 10, 1997. The record reflects that the notice of appeal was filed on September 12, 1997; however, the judgment and commitment order was not entered until September 16, 1997. Thus, the notice of appeal was untimely and ineffective. *See* Ark. R. App. P.—Civ. 4.

[1] Appellant's attorney Gene O'Daniel has assumed responsibility for failing to verify that the judgment and commitment order had been filed prior to the filing of the notice of appeal. The motion reflects that Mr. O'Daniel was mistakenly informed by Appellant's trial counsel that the notice of appeal had to be filed by September 12, 1997. Because he has admitted responsibility for the error, we grant the motion for belated appeal. We direct that a copy of this order be filed with the Committee on Professional Conduct. *See In Re: Belated Appeals in Criminal Cases*, 265 Ark. 964 (1979) (*per curiam*).
