

George Mitchell MOORE v. STATE of Arkansas

CR 98-478

966 S.W.2d 266

Supreme Court of Arkansas
Opinion delivered May 14, 1998

APPEAL & ERROR — MOTION FOR RULE ON CLERK — COUNSEL MUST CONCEDE FAULT. — Although the motion for rule on the clerk admitted that the record was not timely filed and that it was no fault of appellant, the motion did not state good cause for granting the motion where counsel did not concede fault.

Motion for Rule on the Clerk; denied.

John R. Irwin, for appellant.

Winston Bryant, Att'y Gen., by: *Mac Golden*, Asst. Att'y Gen., for appellee.

PER CURIAM. George Mitchell Moore, by his attorney, has filed a motion to file belated appeal, which we will treat as a motion for rule on the clerk.

The motion admits that the record was not timely filed and that it was no fault of the appellant.

[1] This court has held that we will grant a motion for rule on the clerk when the attorney admits that the record was not timely filed due to an error on his part. *See, e.g., Tarry v. State*, 288 Ark. 172, 702 S.W.2d 804 (1986). Here, the attorney does not admit fault on his part. We have held that a statement that it was someone else's fault or no one's fault will not suffice. *Clark v. State*, 289 Ark. 382, 711 S.W.2d 162 (1986). Therefore, appellant's motion must be denied.

The appellant's attorney shall file within thirty days from the date of this per curiam a motion and affidavit in this case accepting full responsibility for not timely filing the transcript, and upon filing same, the motion will be granted and a copy of the opinion will be forwarded to the Committee on Professional Conduct.

The present motion for rule on the clerk is denied.
