

Larry DONIHOO *v.* STATE of Arkansas

CR 97-766

968 S.W.2d 626

Supreme Court of Arkansas
Opinion delivered May 21, 1998

CONTEMPT — MOTIONS SETTING ASIDE DISMISSAL GRANTED — SHOW-
CAUSE ORDER ISSUED. — Where counsel, in his motion to set aside
the order dismissing the appeal, conceded his responsibility to file a
timely brief and stated that he had failed to do so, and where appel-
lant filed a pro se motion to reinstate his appeal, both motions were
granted; the supreme court ordered counsel to appear and show
cause why he delayed nearly nine months in filing the brief, causing
dismissal of the appeal.

Order Setting Aside Dismissal Order, Reinstating Appeal,
and Issuing Show-Cause Order.

Charles A. Potter, for appellant.

Appellant, pro se.

No response.

PER CURIAM. Appellant Larry Donihoo's petition for Rule 37 relief was denied on March 11, 1997, and he filed a notice of appeal from that denial on March 31, 1997. Donihoo's counsel, Charles A. Potter, sent a transcript of the case which was received by this court's clerk on July 9, 1997, but counsel failed to file his brief which was due on August 18, 1997. As a consequence, the State filed its motion to dismiss on March 23, 1998, which we granted on April 16, 1998. On April 24, 1998, Donihoo's counsel, Mr. Potter, moved to set aside our order dismissing the appeal, and in doing so, he conceded it was his responsibility to file a timely brief, but he failed to do so, which caused the dismissal. On May 13, 1998, Donihoo filed a pro se motion asking us to reinstate his appeal.

[1] We grant Donihoo's and his counsel's motions, but because Mr. Potter without explanation has delayed nearly nine months in filing a brief, causing dismissal of Donihoo's appeal, we order Mr. Potter to appear before this court on the 4th day of June, 1998, at 9:00 a.m., to show cause why he should not be held in contempt.

CORBIN, J., not participating.