

David Bruce JONES *v.* STATE of Arkansas

CR 99-320

992 S.W.2d 85

Supreme Court of Arkansas
Opinion delivered June 2, 1999

1. APPEAL & ERROR — MOTION FOR RULE ON CLERK — WHEN GRANTED. — The supreme court 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; a statement that it was someone else's or no one's fault will not suffice.
2. APPEAL & ERROR — MOTION FOR RULE ON CLERK — GOOD CAUSE FOR GRANTING. — An admission by an attorney for a criminal defendant that the record was tendered late due to a mistake on his part is good cause to grant a motion for rule on the clerk.

Motion for Rule on the Clerk; granted.

Larry W. Horton, for appellant.

No response.

PER CURIAM. [1] On March 12, 1999, the record in this case was tendered to the clerk's office, but it was not accepted because the time for filing had exceeded seven months from the date of the entry of judgment. On March 19, 1999, counsel filed a motion for rule on the clerk and again tendered the record to the clerk's office, although the time for filing had lapsed. In his motion, appellant stated the reason the record was tendered late was that the Hot Spring County Circuit Clerk was unable to prepare the transcript in time for proper filing.

This court has held that it 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). Further, 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 was denied.

[2] Appellant's attorney now files another motion for rule on the clerk in which he admits that the record was tendered late due to a mistake on his part. We find that such error, admittedly made by the attorney for a criminal defendant, is good cause to grant the motion. See *Tarry v. State*, 272 Ark. 243, 613 S.W.2d 90 (1981); *In Re: Belated Appeals in Criminal Cases*, 265 Ark. 964 (1979) (per curiam).

A copy of this per curiam will be forwarded to the Committee on Professional Conduct. *In Re: Belated Appeals in Criminal Cases*, 265 Ark. 964.
