

James BILYEU v. STATE of Arkansas

CR 98-1480

10 S.W.3d 105

Supreme Court of Arkansas
Motion for Permission to File Belated Brief
granted February 17, 2000
Concurring opinion delivered February 17, 2000

Motion for Permission to File Belated Brief; granted.

Hurst Law Offices, by: *Q. Byrum Hurst, Jr.*, for appellant.

Mark Pryor, Att'y Gen., by: *O. Milton Fine II*, Ass't Att'y Gen.,
for appellee.

ROBERT L. BROWN, Justice, concurring. I agree to grant the State's motion for permission to file belated brief. I am troubled, however, by the five-month gap between the filing of appellant's brief on August 16, 1999, and the tender of the State's brief on January 24, 2000, especially since the appellant apparently is in prison.¹ The State did not receive a copy of the appellant's brief after it was filed. But the State, no doubt, did receive a copy of the briefing schedule from the Supreme Court Clerk, showing that the appellant's brief was due in August 1999. This should have alerted the State to determine whether the appellant's brief had indeed been filed. Had the State checked, this considerable delay in moving ahead on this appeal could have been avoided.

¹ This is a Rule 37 appeal, and in order to file a Rule 37 petition, a petitioner must be in custody. See Ark. R. Crim. P. 37.1; *Bohanan v. State*, 336 Ark. 367, 985 S.W.2d 708 (1999).