

Kevin Douglas CASEY *v.* STATE of Arkansas

CR. 00-388

14 S.W.3d 525

Supreme Court of Arkansas
Opinion delivered April 20, 2000

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 record was not timely filed late due to a mistake on his part; a statement that it was someone else's fault or no one's fault will not suffice.
2. APPEAL & ERROR — MOTION FOR RULE ON CLERK — DENIED. — Where appellant's attorney did not admit fault, but instead implied fault on the part of some unnamed third party, appellant's motion for rule on the clerk was denied.

Motion for Rule on the Clerk; denied.

Joe Kelly Hardin, for appellant.

No response.

PER CURIAM. Kevin Douglas Case, by his attorney, Joe Kelly Hardin, has filed a motion for rule on the clerk. The motion admits that the record was not timely filed.

[1, 2] 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, but instead implies fault on the part of some unnamed third party. 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.
