

Tracy Donnell SIMMONS *v.* STATE of Arkansas

CR 00-425

15 S.W.3d 344

Supreme Court of Arkansas  
Opinion delivered May 4, 2000

APPEAL & ERROR — MOTION FOR RULE ON CLERK — DENIED. — Where the court of appeals determined that it would review the case on its merits, the supreme court would not review the appellate court's denial of the State's motion for dismissal and denied the State's motion for rule on the clerk.

Appeal from Arkansas Circuit Court, Northern Division; *F Russell Rogers*, Judge; Motion for Rule on Clerk denied.

*Boyd & Buie*, by: *Rufus T. Buie, III*, for appellant.

*Mark Pryor*, Att'y Gen., by: *David R. Raupp*, Ass't Att'y Gen., for appellee.

**P**ER CURIAM. The State brings this Motion for Rule on the Clerk, alleging that the Clerk of the Court improperly declined to file the State's petition for review of the court of appeals's decision denying the State's motion to dismiss in this case. From the pleadings, it appears that there is a dispute as to whether appellee perfected a conditional plea of guilty in order to preserve his right to appeal. The court of appeals' decision to deny the motion to dismiss will permit that court to review that question as it considers the merits of the appeal. In these circumstances, we do not review the denial of a motion for dismissal by the court of appeals. The court of appeals has determined that it will review this case on its merits and the Clerk of the Court correctly declined to lodge the State's petition; therefore, we deny the State's motion for Rule on the Clerk.

Motion denied.