

Dianna SMITH *v.* STATE of Arkansas

CR 00-458

15 S.W.3d 344

Supreme Court of Arkansas
Opinion delivered May 4, 2000

APPEAL & ERROR — MOTION FOR RULE ON CLERK — GOOD CAUSE FOR GRANTING. — An admission of responsibility for negligently miscalculating the time to file a record on appeal by the attorney for a criminal defendant is good cause to grant a motion for rule on the clerk.

Motion for Rule on Clerk; granted.

G.B. “Bing” Colvin, III, for appellant.

No response.

PER CURIAM. Appellant Dianna Smith, by and through her attorney, has filed a motion for rule on the clerk. The record reflects that the judgment and commitment order was filed on September 10, 1999, and a notice of appeal was filed on October 7. An amended order was filed on October 19, followed by an amended notice of appeal filed on October 28. An order extending the time to lodge the record on appeal was entered on January 13, 2000, more than ninety days after the first notice of appeal was filed. The transcript was not tendered until April 7.

Pursuant to Ark. R. App. P.—Crim. 5(a), the record on appeal must be tendered within ninety days from the filing of the first notice of appeal. Rule 5(b) provides that the trial court may order an extension of time to file the record, but the order must be entered before the expiration of the ninety-day period provided in subsection (a). Thus, the order for extension in this case was untimely.

[1] Appellant’s attorney, G.B. “Bing” Colvin III, admits responsibility for negligently miscalculating the time to file the record on appeal. We find that such error, admittedly made by the attorney for a criminal defendant, is good cause to grant the motion. *Jones v. State*, 338 Ark. 29, 992 S.W.2d 85 (1999) (*per*

curiam) (citing *Tarry v. State*, 288 Ark. 172, 702 S.W.2d 804 (1986) (*per curiam*)).

The motion for rule on the clerk is, therefore, granted. A copy of this opinion will be forwarded to the Committee on Professional Conduct. See *In Re: Belated Appeals in Criminal Cases*, 265 Ark. 964 (1979) (*per curiam*).
