

Keith Cox HILSTROM *v.* STATE of Arkansas

CR 96-563

921 S.W.2d 953

Supreme Court of Arkansas
Opinion delivered June 3, 1996

1. APPEAL & ERROR — MOTION FOR RULE ON CLERK DENIED — ATTORNEY DID NOT ADMIT FAULT. — The supreme court denied appellant's motion for rule on the clerk where the attorney did not admit fault on his part but instead implied that the court reporter who prepared the transcript provided him with misinformation; a statement that the fault was someone else's or no one's will not suffice.
2. APPEAL & ERROR — MOTION FOR RULE ON CLERK — WHEN GRANTED. — The supreme court directed appellant's attorney to file within thirty days a motion and an affidavit accepting full responsibility for not timely filing the transcript; upon the filing, the motion would be granted.

Motion for Rule on the Clerk; denied.

James O. Cox, for appellant.

No response.

PER CURIAM. Appellant, Keith Cox Hilstrom, was convicted on October 9, 1995, of theft of leased personal property and theft by deception. His notice of appeal was filed on November 6, 1995. The deadline for filing the record was May 6, 1996. The record was tendered to the clerk's office after the time for filing had lapsed.

The appellant, by his attorney, James O. Cox, has filed a motion for rule on the clerk to compel the clerk's office to accept the record. In his motion, appellant's attorney states that he relied upon misinformation given his office staff with regard to the filing date.

[1] 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 the court reporter who prepared the transcript provided him with misinformation. 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.

[2] 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.
