

Kenny SMITH *v.* STATE

CR 96-573

921 S.W.2d 953

Supreme Court of Arkansas
Opinion delivered June 3, 1996

APPEAL & ERROR — MOTION FOR RULE ON THE CLERK TREATED AS MOTION FOR BELATED APPEAL — GOOD CAUSE FOR GRANTING. — Where the clerk refused the record because the notice of appeal was filed prior to the date the posttrial motion was deemed denied, the supreme court treated appellant's motion for a rule on the clerk as a motion for belated appeal; an admission by the attorney for a criminal defendant that the notice of appeal was filed untimely due to a mistake on his part is good cause to grant the motion.

Motion for Rule on the Clerk; granted.

Michael L. Allison, for appellant.

No response.

PER CURIAM. Appellant, Kenny Smith, by his attorney, Michael L. Allison, has filed a motion for a rule on the clerk. We treat this as a motion for belated appeal. Mr. Allison states by motion that the record was refused by the clerk because the notice of appeal was filed prior to the date the posttrial motion was deemed denied. Mr. Allison admits the notice of appeal was filed untimely due to a mistake on his part.

[1] We find that such an error, admittedly made by the attorney for a criminal defendant, is good cause to grant the motion. *See In Re: Belated Appeals in Criminal Cases*, 265 Ark. 964 (1979) (per curiam). The motion is therefore granted.

A copy of this opinion will be forwarded to the Committee on Professional Conduct.

DUDLEY, J., not participating.