

Allen SMITH *v.* STATE of Arkansas

CR 96-662

931 S.W.2d 441

Supreme Court of Arkansas  
Opinion delivered November 4, 1996

CONTEMPT — BELATED-BRIEF MOTION GRANTED — STATEMENTS IN MITIGATION CONSIDERED — NO FURTHER ACTION NECESSARY. — *Where*, at a show-cause hearing, counsel for appellant appeared and stated that he had tendered the criminal-appeal brief several days before the hearing; where counsel also admitted that the facts as stated in an earlier per curiam opinion were correct but denied that his actions were willful; and where counsel offered extenuating circumstances that, for the most part, concerned the illness of his father and law partner and his resulting absence from the firm, the supreme court considered counsel's statements in mitigation of his failure to file a timely brief and directed that no further action was necessary.

Motion to File Belated Brief granted; Contempt Order issued.

*Louis Etoch*, for appellant.

No response.

PER CURIAM. This is an aggravated-assault case in which the appellant was convicted and sentenced to twelve years in prison.

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Counsel for appellant, Louis Etoch, was ordered to appear on October 14, 1996, to show cause why he should not be held in contempt for failure to timely file the brief in this cause. See per curiam opinion delivered on October 7, 1996. At the show-cause hearing, Mr. Etoch appeared and stated that he had tendered the brief on behalf of the appellant on October 9, 1996.

[1] At the hearing, Mr. Etoch also admitted that the facts as stated in the per curiam of October 7, 1996, were correct, but denied that his actions were willful, and offered extenuating circumstances which, for the most part, concerned the illness of his father and law partner, Mike Etoch, and his resulting absence from the firm. After hearing and considering counsel's statements and other matters before the court, we consider Mr. Etoch's statements, in mitigation of his failure to file a timely brief, and direct no further action is necessary.

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