

James Hollis GUSS *v.* STATE of Arkansas

CR 96-905

936 S.W.2d 76

Supreme Court of Arkansas
Opinion delivered January 27, 1997

1. APPEAL & ERROR — MOTION FOR RECONSIDERATION OF DISMISSAL AND FOR FILING BRIEF OUT OF TIME GRANTED. — Where the supreme court had dismissed appellant's appeal for failure to file brief, and where appellant's attorney subsequently tendered appellant's brief contemporaneously with the filing of a motion for reconsideration of dismissal and for filing brief out of time, admitting in his motion that the brief was tendered late due to an error on his part, the court found that such an error, admittedly made by the attorney for a criminal defendant, was good cause to grant the motion.

2. CONTEMPT — SHOW-CAUSE ORDER ISSUED. — The supreme court ordered appellant's attorney to appear before it at a designated time to show cause why he should not be held in contempt for his failure to file appellant's brief in a timely manner.

Motion for Reconsideration of Dismissal and for Filing Brief Out of Time; granted.

Order to Appear and Show Cause issued.

Jeffrey H. Kearney, for appellant.

No response.

PER CURIAM. Appellant James Guss, by his attorney, Jeffrey H. Kearney, has filed a motion for reconsideration of dismissal, and for filing brief out of time.

Appellant filed a timely notice of appeal from the denial of his petition for postconviction relief pursuant to Rule 37 of the Arkansas Rules of Criminal Procedure. On August 2, 1996, appellant's attorney filed a motion for rule on the clerk in which he admitted that the record of the postconviction proceedings was tendered late due to a mistake on his part. On September 16, 1996, this court by *Per Curiam* order granted appellant's motion for rule on the clerk and forwarded a copy of the *Per Curiam* order to the Committee on Professional Conduct.

Appellant's brief was due on October 26, 1996. Appellant's attorney obtained a seven-day extension from the Supreme Court Clerk, thereby extending the due date to November 2, 1996.

On December 23, 1996, this court dismissed Appellant's appeal for failure to file brief. Ark. S. Ct. R. 4-5. On December 26, 1996, appellant's attorney, Jeffrey H. Kearney, tendered appellant's brief contemporaneously with the filing of the motion for reconsideration of dismissal, and for filing brief out of time.

Appellant's attorney admits in his motion that the brief was tendered late due to an error 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.

[2] Jeffrey H. Kearney is also ordered to appear before this court on the 10th day of February, 1997, at 9:00 a.m., to show cause why he should not be held in contempt of this court for his failure to file appellant's brief in a timely manner.
