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IN THE MATTER OF CONTEMPT OF COUNSEL,  
J.F. ATKINSON JR.

CR 96-633

936 S.W.2d 747

Supreme Court of Arkansas  
Opinion delivered February 3, 1997

CONTEMPT — HEARING ORDERED ON CONTEMPT CHARGE —  
MASTER APPOINTED — COUNSEL'S BURDEN OF PROOF. — Where  
counsel appeared before the supreme court in a show-cause hearing  
and entered a plea of not guilty to the charge of contempt, the  
court ordered a hearing to be held to determine whether counsel  
had a meritorious defense to the charge of failing to file his brief in  
a timely manner and appointed a master to conduct the hearing and  
make findings of fact; counsel would have the burden of proving by  
a preponderance of the evidence that he had meritorious reasons for  
not filing the brief when due as prescribed by Ark. Sup. Ct. R. 4-3.

Appointment of Master.

*J.F. Atkinson Jr., pro se.*

PER CURIAM. On December 8, 1995, Appellant Johnny  
Mark Propst entered a plea of guilty to the charge of first-degree  
murder and was sentenced to forty years' imprisonment. On Feb-  
ruary 2, 1996, attorney J.F. Atkinson Jr. was appointed by the  
circuit court to represent Appellant on a petition filed pursuant to  
A.R.Cr.P. Rule 37, alleging ineffective assistance of counsel  
against his former attorney. After a hearing on the petition, in an  
order filed February 22, 1996, the circuit court denied Appellant  
any relief under Rule 37. A notice of appeal was filed by Appel-  
lant's attorney on February 26, 1996. The transcript was lodged  
with this court on May 28, 1996.

Appellant's attorney sought and obtained an extension of  
time in which to file Appellant's brief to July 14, 1996. Appel-  
lant's attorney next filed a motion to withdraw as counsel for  
Appellant on June 28, 1996, and such motion was denied by this  
court. Appellant's attorney subsequently requested and was  
granted another extension of time in which to file Appellant's

brief to August 13, 1996. Appellant's attorney additionally requested and was granted a third extension of time in which to file Appellant's brief to October 12, 1996. On October 22, 1996, the clerk of this court sent a letter to Appellant's attorney, stating that the time in which to file Appellant's brief had expired and that it would be necessary to file a motion for belated brief.

Shortly thereafter, the State of Arkansas filed a motion to dismiss the appeal on the grounds that the time in which to file Appellant's brief had expired and Appellant had not sought permission to file a belated brief. This court granted the State's motion to dismiss the appeal and ordered Appellant's attorney to appear before this court and show cause as to why he should not be held in contempt for failing to file Appellant's brief in a timely manner.

Appellant's brief, as well as a motion for belated brief, was finally tendered to the clerk's office on December 20, 1996. J.F. Atkinson Jr. appeared before this court on Monday, January 27, 1996, and entered a plea of not guilty to the charge of contempt.

[1] It is thus necessary for a hearing to be held to determine whether counsel has a meritorious defense to the charge of failing to file his brief in a timely manner. We appoint the Honorable Robert Dudley as a Master to conduct the hearing. Counsel will have the burden of proving, by a preponderance of the evidence, that he has meritorious reasons for not filing the brief when due as prescribed by the Rules of Supreme Court, Rule 4-3.

The Master shall conduct a hearing and make findings of fact. Upon receiving the findings of fact from the Master, we will make a decision as to whether or not counsel, J.F. Atkinson Jr., should be held in contempt.