

Robert CAPLE *v.* STATE of Arkansas, County of Van Buren

CR 96-799

937 S.W.2d 186

Supreme Court of Arkansas
Opinion delivered February 17, 1997

CONTEMPT — SHOW-CAUSE ORDER ISSUED. — Where, although four attorneys had served as appellant's counsel and had requested and been granted motions in order to perfect his appeal, twenty-two months had passed without any record having been filed, and where the supreme court was unable to determine from what had been filed why repeated delays had occurred and no record had been filed, the court directed the four attorneys to appear and to show cause why any one or all of them should not be held in contempt of court for failure to perfect the appeal.

Second Motion for Rule on Clerk; Show-Cause Order issued.

Mel A. Jackson, for appellant.

Winston Bryant, Att'y Gen., by: *Clint Miller*, Deputy Att'y Gen. and Senior App. Advocate, for appellee.

PER CURIAM. On May 18, 1995, appellant Robert Caple was convicted, and on June 18, 1995, his counsel, Public Defender Karen Baker, filed a notice of appeal. During this same period, Caple retained attorney Steve Kirk to file his appeal, and Kirk filed a notice of appeal on Monday, June 19, 1995.

On July 15, 1995, George Stephens became the Public Defender, replacing Karen Baker. However, Kirk took the next step on Caple's behalf on September 14, 1995, by obtaining a 120-day extension to file the appellate record. This was Kirk's last act, apparently because the record reflects Caple dismissed Kirk as his counsel on January 2, 1996. Apparently, Kirk never moved to withdraw as counsel or obtain this court's approval to do so.

On April 9, 1996, Stephens resigned from the Public Defender's Office and was replaced by Ralph Blagg. On July 8, 1996, Blagg's deputy, Mel A. Jackson, filed a motion for rule on

the clerk in order to file a late record, and on September 16, 1996, this court, by a 4-3 vote, granted that motion. In granting the motion, the circuit court and court reporter were given until October 16, 1996, to complete the record. However, on September 25, 1996, the Attorney General's Office filed a motion, stating it had been contacted by the court reporter in this cause, and was informed she had never been asked to prepare a record. As a consequence, the Attorney General requested this court grant an additional ninety days, or until January 14, 1997, to file the record, and by a 4-3 vote, this court granted the extension to January 14, 1997. Apparently, the Attorney General's extension motion triggered deputy defender Mel A. Jackson to write a letter dated October 25, 1996, to the court reporter, requesting she prepare the transcript.

Notwithstanding the granting of the foregoing extensions to file the transcript, no record was filed on or before the last January 14, 1997 deadline, but instead on January 24, 1997, Mel A. Jackson filed a second motion for rule on the clerk. At the same time, Jackson moved to withdraw as Caple's counsel, stating that he no longer was a deputy public defender.

[1] In sum, four attorneys, Steve Kirk, George Stephens, Ralph Blagg, and Mel A. Jackson have served as Caple's counsel in this cause and have requested and been granted motions in order to perfect Caple's appeal. Nonetheless, twenty-two months have passed without any record having been filed. From what has been filed with the court, we are unable to determine why repeated delays have occurred and no record has been filed.

Therefore, attorneys Steve Kirk, George Stephens, Ralph Blagg, and Mel A. Jackson are directed to appear before this court at 9:00 a.m. on Monday, March 3, 1997, to show cause why any one or all of them should not be held in contempt of court for failure to perfect the appeal in this case.