

## Theron WATSON v. STATE of Arkansas

RC 90-35

795 S.W.2d 355

Supreme Court of Arkansas  
Opinion delivered September 17, 1990

APPEAL & ERROR — MOTION FOR RULE ON THE CLERK — GOOD CAUSE FOR GRANTING. — An admission by an attorney for a criminal defendant that the record was tendered late due to a mistake on his part is good cause to grant a motion for rule on the clerk.

Motion for Rule on the Clerk; granted.

*James R. Marschewski*, Deputy Public Defender, for appellant.

No response.

PER CURIAM. This is a motion by the petitioner, Theron Watson, for a rule on the clerk to file a record tendered 67 days late. Contained in the motion is a statement by Mr. James Marschewski, the Public Defender for Sebastian County, from which it appears that he, as Watson's attorney, had inadvertently failed to file the record in Watson's appeal and in which he accepts responsibility for the failure to comply with Ark. R. App. P. 5.

Rule 5 provides that the record on appeal shall be filed with the clerk of this court within 90 days of the notice of appeal unless the trial court grants an extension. The order of extension must, however, be entered before the expiration of the 90 day period, and in no event shall the time be extended more than seven months from the date of the entry of the judgment.

In this case, Watson obtained valid extensions through April 29, 1990, for filing his transcript. On that date, however, he failed to tender the transcript and failed to obtain an extension. Consequently, Watson did not comply with Rule 5.

In *Harkness v. State*, 264 Ark. 561, 572 S.W.2d 835 (1978), where a deputy public defender miscalculated the time for filing an appeal for the petitioner by two days, this court granted the petitioner's motion for rule on the clerk and stated that it would amount to a denial of the petitioner's constitutional right of

appeal for the court to refuse to grant his motion as such a miscalculation amounted to ineffective assistance of counsel.

[1] Mr. Marschewski's failure to file the record in this case is a denial of Watson's constitutional right of appeal and constitutes ineffective assistance of counsel. Consequently, we grant Watson's motion for rule on the clerk and direct that a copy of this per curiam be forwarded to the Committee on Professional Conduct.

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