

Kenneth D. TRAYLOR v. STATE of Arkansas
CR 90-119 795 S.W.2d 361
Supreme Court of Arkansas
Opinion delivered October 1, 1990

CRIMINAL PROCEDURE — FAILURE TO RULE ON POST-CONVICTION MOTION — CASE REMANDED. — Where appellant made a timely motion for a new trial asserting that his representation at trial had been inadequate and new counsel was appointed, but the record did not reflect the motion was ever acted on by the trial court, the appellate court did not reach the merits of the case, but remanded the case to the trial court for consideration of the post-conviction motion.

Appeal from Hot Spring Circuit Court; *John W. Cole*, Judge; remanded.

Joe K. Hardin, for appellant.

Steve Clark, Att'y Gen., by: *Sandra Bailey Moll*, Asst. Att'y Gen., for appellee.

DALE PRICE, Justice. The appellant was convicted of breaking or entering, theft of property, and of being a felon in possession of a firearm. He raises six issues on appeal. Five of those issues involve direct attacks on his conviction. We consider only the sixth issue in which the appellant claims the trial court

should have ordered a new trial due to ineffective assistance of counsel.

[1] Less than thirty days after his conviction, the appellant filed a motion for a new trial asserting that his representation at trial had been inadequate. *See* A.R.Cr.P. Rule 36.4. The motion was filed in a timely manner and new counsel was appointed. However, the record does not reflect that the motion was ever acted upon by the trial court. Therefore, as in *Mobbs v. State*, 303 Ark. 98, 792 S.W.2d 601 (1990), we do not reach the merits of the case. We remand to the trial court for consideration of the post-conviction motion.

Remanded.
