

Randolph McDONALD v. STATE of Arkansas

CR 03-957

124 S.W.3d 438

Supreme Court of Arkansas
Opinion delivered September 11, 2003

1. APPEAL & ERROR — MOTION FOR RULE ON CLERK TREATED AS MOTION FOR BELATED APPEAL — WHEN GRANTED. — The supreme court will grant a motion for rule on the clerk, which it will treat as a motion for a belated appeal, when the attorney admits that the failure to file a timely notice of appeal was due to an error on her part; a statement that it was someone else's fault or no one's fault will not suffice.
2. APPEAL & ERROR — MOTION FOR RULE ON CLERK TREATED AS MOTION FOR BELATED APPEAL — DENIED. — Where appellant's attorney did not admit fault in failing to file a timely notice of appeal, the supreme court denied appellant's motion for rule on the clerk, directing appellant's attorney to file within thirty days a motion and affidavit showing good reason as required under Ark. R. App. P.—Crim. 2(e) and accepting full responsibility for not timely filing the notice of appeal.

Motion for Rule on the Clerk; denied.

Laura Cunningham, Benton County Public Defender, for appellant.

○ No response.

PER CURIAM. Randolph McDonald, by attorney Laura Cunningham, has filed a motion for rule on the clerk. The clerk refused to file McDonald's appeal because the notice of appeal was untimely. McDonald seeks an order that the clerk be instructed to file the appeal because the clerk erred in misapprehending the facts or misinterpreting the law. We deny the motion.

McDonald states that he is proceeding under Ark. R. Crim. P. 24.3(b), which permits entry of a conditional plea of guilty and appeal from the judgment to obtain appellate review of an adverse determination on a pretrial motion to suppress evidence. Ark. R. Crim. P. 24.3(b) (2003). A Plea Agreement and Order including the conditional plea was entered April 14, 2003; however, McDonald has not appealed from the April 14, 2003, judgment as provided under Ark. R. Crim. P. 24.3(b). Instead, McDonald attempts to appeal from a November 4, 2002, order denying his motion to suppress. McDonald erred in failing to file a notice of appeal from the June 4, 2003, judgment.

[1, 2] This court will grant a motion for rule on the clerk, which we will treat as a motion for a belated appeal, when the attorney admits that the failure to file a timely notice of appeal was due to an error on her part. *See, e.g., Slack v. State*, 338 Ark. 643, 999 S.W.2d 668 (1999). Here, the attorney does not admit fault. We have held that a statement that it was someone else's fault or no one's fault will not suffice. *Clark v. State*, 289 Ark. 382, 711 S.W.2d 162 (1986). Therefore, appellant's motion must be denied. The appellant's attorney shall file within thirty days from the date of this *per curiam* opinion a motion and affidavit showing good reason as required under Ark. R. App. P.—Crim. 2(e), and accepting full responsibility for not timely filing the notice of appeal. Upon filing, the motion will be granted.

Motion denied.

THORNTON, J., not participating.