

Billy WELCH *v.* STATE of Arkansas

CR. 03-539

119 S.W.3d 513

Supreme Court of Arkansas  
Opinion delivered October 2, 2003

APPEAL & ERROR — MOTION FOR RULE ON 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.

*Jack R. Kearney*, for appellant.

No response.

**P**ER CURIAM. The appellant, through his attorney, Jack R. Kearney, timely filed a notice of appeal and designation of record on January 3, 2003. The appellant tendered a partial record on April 30, 2003, which the clerk refused to accept because it was not tendered in conformance with Ark. R. App. P.—Civ. 5(a) and (b) (2002).

The appellant filed his first motion for rule on clerk, which was denied in a *per curiam* on June 12, 2003. In our *per curiam*, we directed Mr. Kearney to file a motion and affidavit accepting full responsibility for not timely filing the record in this case. The appellant has now filed with this court a second motion for rule on the clerk and has attached an affidavit from Mr. Kearney in which he accepts responsibility for the late tender of the record.

[1] We find that such an error, admittedly made by the attorney for a criminal defendant, is good cause to grant the motion. See *In Re: Belated Appeals in Criminal Cases*, 265 Ark. 964 (1979) (*per curiam*).

The motion is, therefore, granted. A copy of this opinion will be forwarded to the Committee on Professional Conduct.

THORNTON, J., not participating.