

Albert BROWNING *v.* STATE of Arkansas

CR 80-263

610 S.W. 2d 263

Supreme Court of Arkansas

Opinion delivered January 19, 1981

APPEAL & ERROR — UNTIMELY TENDER OF RECORD — GOOD CAUSE OR REASON. — The record was not timely filed and appellant's attorney, in his motion for a rule on the clerk, states as the reason for the delay that the reporter preparing the transcript failed to advise the attorney that the transcript was not completed within the 90 days after filing of the notice of appeal, and the attorney had relied upon the reporter to prepare the transcript within the allotted time or request an extension of time. *Held:* It is the duty of the attorney to see that the record is timely filed, thus, no good reason is shown for the delay and the motion is denied.

Motion for Rule on the Clerk; motion denied.

*Stevan B. Dalrymple*, for appellant.

*Steve Clark*, Atty. Gen., for appellee.

PER CURIAM. Albert Browning, by his attorney, has filed a motion for a rule on the clerk.

The motion admits that the record was not timely filed and states the reason for the delay is:

The attorney for the appellant had been assured by the reporter preparing the transcript that it would be ready prior to running of the 90 days after filing of the notice of appeal, and that if it were not the reporter would obtain a timely extension of time.

Relying upon these assertions the attorney for the appellant had no knowledge or indication that the time schedule prescribed by the rules of the Court had not been complied with.

It is not the duty of the court reporter to advise the attorney whether "... the time schedule prescribed by the rules of the Court had been complied with." It is the duty of the attorney to see that the record is timely filed. Hence, no good reason is shown for the delay and we will deny the motion as it is filed.

If the affidavit attached to the motion had stated that the attorney made an error or had been careless in the computation of time, or gave any good cause, the motion could be granted. In a per curiam opinion regarding belated appeals rendered February 5, 1979, 265 Ark. 964, we discussed the problem of an untimely tender of a record *caused by the attorney*. We decided that we have no alternative but to grant the motion for relief in such a case. However, we pointed out that a copy of the opinion would be forwarded to the Committee on Professional Conduct as is our practice.

We do not hold that we will deny a belated appeal if a reason is shown to grant the rule.