

SUPREME COURT OF ARKANSAS

No. CR11-271

MICHAEL DEWAYNE GULLEY
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered February 23, 2012

MOTION TO DISMISS APPEAL
[NEVADA COUNTY CIRCUIT
COURT; NO. CR-09-62-1; HON.
RANDY WRIGHT, JUDGE]

MOTION TO DISMISS DENIED;
MOTION TO FILE BELATED BRIEF
GRANTED.

PER CURIAM

Attorney Terrence Cain represents appellant Michael Gulley, who was convicted of capital murder and first-degree murder and sentenced to life imprisonment. A notice of appeal was filed on Mr. Gulley's behalf by his attorney at trial, Ronald Laval Davis, Jr., and the appellate record was subsequently filed in this court on March 15, 2011. On April 22, 2011, Mr. Davis received a seven-day extension of the deadline for filing Mr. Gulley's brief. On May 3, 2011, this court granted an entry of appearance for Terrence Cain as additional counsel. On May 3 and May 31, 2011, Mr. Cain received additional extensions of the deadline for filing Mr. Gulley's brief. The final deadline to file the brief was June 9, 2011. On June 6, 2011, Mr. Cain filed a motion to reconsider his last request to extend the briefing time, asking that he be given until June 17, 2011, to file the brief, but this request was denied that same day.

The June 9, 2011 deadline was not met, and there were no further filings in the case until February 2, 2012, when the State filed a motion to dismiss the appeal on grounds that no brief had been filed, nor had a motion to file a belated brief been filed. Four days later, on

February 6, 2012, Mr. Cain submitted a motion to file a belated brief and admitted fault in not filing the brief in a timely manner. This court has held that we will accept a criminal appellant's belated brief to prevent an appeal from being aborted, *see Stewart v. State*, 319 Ark 242, 889 S.W.2d 771 (1995); however, good cause must be shown to grant the motion. *Brown v. State*, 347 Ark. 362, 64 S.W.3d 274 (2002) (per curiam) (holding that attorney's admitted error was good cause to grant the motion). Because Mr. Cain has admitted fault, we grant the motion to file a belated brief and deny the State's motion to dismiss the appeal.

However, we also direct Mr. Cain to appear before this court on March 1, 2012, at 9:00 a.m., and show cause why he should not be held in contempt for failing to file his client's brief by the June 9, 2011 deadline or at any time in the eight months following that deadline. We also note that Mr. Davis has not been relieved as counsel and remains an attorney-of-record and responsible for this appeal. We therefore direct Mr. Davis to also appear before this court on March 1, 2012, at 9:00 a.m., and show cause why he should not be held in contempt for failing to timely file his client's brief.

DANIELSON, J., would not require the attorneys to show cause but would instead refer both attorneys to the Supreme Court Committee on Professional Conduct.