

James E. HORVATH *v.* STATE of Arkansas

CR 06-72, CR 06-79

227 S.W.3d 929

Supreme Court of Arkansas  
Opinion delivered February 9, 2006

MOTIONS — MOTION TO DISMISS GRANTED FOR UNTIMELY APPEAL. — The supreme court granted the City of Russellville's motion to dismiss Horvath's appeal because he did not request or obtain an extension of time within which to file the record; therefore, because he failed to file the record in this court within ninety days, his appeal was untimely.

Motion to Dismiss Appeal, granted.

*William F. Smith, III*, for City of Russellville.

No response.

Motion to Proceed In Forma Pauperis, denied as moot.

Pro se.

No response.

**P**ER CURIAM. The City of Russellville moves this court to dismiss James E. Horvath's appeal from his convictions for three misdemeanors. Horvath was tried on June 2, 2005, and the judgment was entered July 18, 2005. Horvath filed a motion for new

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trial on August 16, 2005, which was denied on August 25, 2005. He then filed a notice of appeal on the denial of the motion for new trial on September 20, 2005, and a notice of appeal on the judgment on September 23, 2005. However, to date, Horvath has filed no record in this case.

Pursuant to Ark. R. App. P.—Crim. 4(a), matters pertaining to the record on appeal are governed by the Arkansas Rules of Appellate Procedure—Civil. Arkansas Rule of Appellate Procedure—Civil 5 requires that, absent an extension, the record on appeal shall be filed within ninety days from the filing of the first notice of appeal.

[1] There is no indication in the partial record filed with this motion or in the pleadings that Horvath requested or obtained an extension of time within which to file the record. The ninety days ran in late December 2005. Because Horvath failed to file the record in this court within ninety days, his appeal is untimely. *Waddle v. State*, 356 Ark. 501, 156 S.W.3d 226 (2004). The City of Russellville's motion to dismiss is granted, and Horvath's motion to proceed in forma pauperis is denied as moot.

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