

SUPREME COURT OF ARKANSAS

Gooden v. State

350 Ark. 297 (2002) · Decided October 10, 2002

SUMMARY

The Arkansas Supreme Court held that attorney Gene McKissic failed to comply with the deadline for filing Brian Gooden’s appellate brief. Although the court recognized mitigating circumstances arising from the attorney-client relationship, it found McKissic in contempt, imposed a \$250 fine, directed the clerk to file the brief, and referred the order to the Professional Conduct Committee.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Arkansas
DECIDED	October 10, 2002
DISPOSITION	other
PROCEDURAL POSTURE	The Supreme Court of Arkansas considered whether appointed appellate counsel should be held in contempt for failing to file the appellant's brief by the court-ordered deadline.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Brian Gooden v. State

TOPICS

- appellate procedure
- criminal procedure

PRACTICE AREAS

- appellate procedure
- criminal procedure
- attorney discipline

QUESTIONS PRESENTED

- Whether appellate counsel's failure to comply with the court's order requiring timely filing of the appellant's brief constituted contempt of court.
- Whether counsel's mistake and difficult relationship with the appellant warranted mitigation of the contempt sanction.

HOLDINGS

1. Counsel's failure to comply with the Supreme Court's order requiring him to file the appellant's brief by February 27, 2002, constituted contempt of court.
2. Counsel's mistake and the communication problems with the appellant warranted consideration in mitigation but did not excuse the failure to comply with the court's filing deadline.

KEY QUOTATIONS

“While we understand the apparent breakdown in communication between counsel and client, Mr. McKissic owed an obligation to the criminal justice system and to this court to prosecute this appeal in a timely manner.”

FACTUAL BACKGROUND

Gooden was convicted of four felonies in 1995 and pursued an appeal while represented by Gene McKissic. Counsel and Gooden had a serious breakdown in communication, including disputes over the plea agreement, accusations of misconduct, and disagreements about the contents of the appellate brief. Although counsel understood that he was required to comply with the Supreme Court's order, he failed to file the brief by the final extension date and filed it only after the court issued a contempt show-cause order.

PROCEDURAL HISTORY

Gooden was convicted of four felony offenses and sentenced to six years' imprisonment. After counsel filed a notice of appeal, the appeal became dormant and counsel repeatedly sought to be relieved. The Supreme Court directed counsel to remain on the case and file the record and brief, denied a stay in part, and set a final deadline of February 27, 2002. Counsel missed the deadline but tendered the brief on April 11, 2002, prompting a contempt hearing and appointment of a master to determine the facts.

DISPOSITION

other

CASES CITED

- Gooden v. State, 344 Ark. 291, 40 S.W.3d 271 (2001)
- Gooden v. State, 2001 WL 1388839 (Nov. 8, 2001)

OPINION

PER CURIAM.

Per Curiam. By per curiam order dated April 18, 2002, this court appointed Hon. John Lineberger as a master to determine the facts on why attorney Gene McKissic should not be held in contempt for failing to file appellant's brief on behalf of Brian Gooden by the final extension date of February 27, 2002. Judge Lineberger has now submitted his Report and Findings of Fact.

In pertinent part, Judge Lineberger found: The evidence is clear that McKissic did not obey this Court's Order directing him to file Gooden's brief by February 27, 2002. The evidence is also clear that the brief was not filed due to a mistake on McKissic's part. McKissic did not ask for a hearing to dispute these facts. He asked for this hearing to describe to the Court the difficulty he found himself to be in trying to defend someone who: (1) Had accused him (wrongfully, he felt) in three different forums of fraud, conspiracy and other evils.

(2) Was requiring him to breach a plea agreement he had reached with a prosecuting attorney. (3) Was accusing him of taking money for an appeal when he had never been paid for any work he had ever done for the person.

(4) Was accusing him of being ineffective and incompetent. (5) Was calling him, regularly and demanding that he make allegations in the brief which he considered to be ridiculous. McKissic found himself in what he considered to be a no win situation, but he understood his obligation. From the Record: (R.35) Q. Can you understand, though, why the Court would be getting upset at not getting a brief from you?

A. Their job — once they tell a lawyer to do something, a lawyer's job is to do that. And I don't have a quarrel with that no matter what they find. My responsibility is to do it. What I'm asking them to understand, though is that I can't take directions from both the court and the client and satisfy both. And it was very hard knowing the agreement we had made with the State and knowing what the truth was to be writing a brief about something I know is not what the truth is.

It is the opinion of the undersigned that Mr. McKissic is entitled to consideration in mitigation of his mistake. On October 24, 1995, the appellant was convicted of four felony offenses and sentenced to six years' imprisonment. Two days later, Mr. McKissic filed a notice of appeal and an order was entered releasing the appellant on an appeal bond. Since that time, the appeal has either been dormant or Mr. McKissic has sought to be relieved as counsel.

Ill,will clearly exists between counsel and the appellant. Nevertheless, we directed Mr. McKissic to remain as counsel for the appellant and to lodge the record and file the brief. *Gooden v. State*, 344 Ark. 291, 40 S.W.3d 271 (2001).

The appellant then sought to stay his appeal and hold Mr. McKissic in contempt. We denied the stay of appeal in part but ordered Mr. McKissic to give the appellant a copy of the brief when filed. *Gooden v. State*, 2001 WL 1388839 (Nov. 8, 2001).

We denied the motion for contempt. *Id.* Mr. McKissic was given a final extension to file the appellant's brief as of February 27, 2002. That deadline was missed. Mr. McKissic eventually tendered the appellant's brief to the clerk of this court on April 11, 2002, the day he appeared before this court to show cause why he should not be held in contempt. While we understand the apparent breakdown in communication between counsel and client, Mr. McKissic owed an

obligation to the criminal justice system and to this court to prosecute this appeal in a timely manner.

That was not done. We direct the clerk of this court to file the appellant's brief. We find that Mr. McKissic is in contempt of court and fine him \$250. A copy of this per curiam order will be sent to the Professional Conduct Committee.