

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)