

SUPREME COURT OF ARKANSAS

George v. State

351 Ark. 209 (2002) · Decided November 21, 2002

SUMMARY

The Arkansas Supreme Court considers a renewed motion for a rule on clerk concerning a transcript prepared by an uncertified court reporter. The court holds that the trial court’s finding of sufficient accuracy and the prosecuting attorney’s affidavit certifying the transcript satisfy the applicable requirements, and it grants the motion despite defense counsel’s refusal to certify the transcript.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Arkansas
DECIDED	November 21, 2002
DISPOSITION	writ_granted
PROCEDURAL POSTURE	The appellant renewed a motion for a rule on clerk seeking acceptance and filing of the appellate transcript prepared by an uncertified court reporter, and alternatively requested a new trial.
PRECEDENTIAL VALUE	precedential
PARTIES	Myron Kent George v. State

TOPICS

- appellate procedure
- criminal procedure

PRACTICE AREAS

- appellate procedure
- criminal procedure

QUESTIONS PRESENTED

- Whether a transcript prepared by an uncertified court reporter may be accepted and filed when the trial court has found it sufficiently accurate and the prosecuting attorney has certified it as a fair and accurate record, despite defense counsel's refusal to certify it.

2. Whether George was entitled to a new trial because defense counsel could not certify the transcript's accuracy.

HOLDINGS

1. The trial court's finding that the transcript was sufficiently accurate for appeal purposes, together with the prosecuting attorney's affidavit certifying it as a fair and accurate record, satisfied the requirements established in *Mitchell v. State*. The Supreme Court therefore granted the renewed motion for a rule on clerk.
2. George was not granted a new trial; the court resolved the matter by granting the motion for a rule on clerk and directing acceptance of the transcript.

KEY QUOTATIONS

“We hold that the trial court’s order finding sufficient accuracy for appeal purposes and the prosecuting attorney’s affidavit certifying the transcript to be a fair and accurate record of George’s trial satisfy the Mitchell requirements.”

FACTUAL BACKGROUND

George's trial transcript was prepared by Nila Keels, who was not a certified court reporter at the time of trial. The trial court found that the transcript had no substantial defects and was sufficiently accurate for appellate purposes. The prosecuting attorney independently reviewed the transcript and attached exhibits and certified by affidavit that, apart from insignificant clerical errors, it appeared to be a fair and accurate record. Defense counsel cited only the passage of time as the reason for refusing to certify the transcript and identified no specific defects.

PROCEDURAL HISTORY

George's trial occurred on January 22-23, 2001. After delays in preparation and filing of the record, the Supreme Court previously denied a rule-on-clerk motion and directed the circuit court to secure prompt certification of a complete record. The trial court later found the transcript sufficiently accurate for appellate use, and the prosecuting attorney submitted an affidavit stating that the transcript was fair and accurate. Defense counsel refused to certify the transcript but renewed the motion for a rule on clerk.

DISPOSITION

writ_granted

CASES CITED

- *George v. State*, 346 Ark. 22, 53 S.W.3d 526 (2001) (per curiam)
- *Mitchell v. State*, 345 Ark. 359, 45 S.W.3d 846 (2001) (per curiam)

OPINION

PER CURIAM.

Per Curiam. Myron Kent George, through his attorney, Joseph D. Hughes, renews his motion for a rule on clerk and seeks, in the alternative, a new trial. The record shows that George's trial was held January 22-23, 2001.

On April 23, 2001, George moved for an extension of time to file the record. On June 1, 2001, that motion was granted and the time for filing the record was extended until August 9, 2001. George then filed a motion for rule on clerk on August 8, 2001.

On September 13, 2001, we denied the motion and issued a per curiam order to the circuit court "to take whatever actions are necessary to secure the prompt certification of a full and complete record for appeal in this matter." *George v. State*, 346 Ark. 22, 22, 53 S.W.3d 526, 527 (2001) (per curiam).

On October 2, 2001, George's counsel received the transcript. By order dated October 25, 2002, the trial court found (1) that there were no substantial defects in the transcript prepared by Nila Keels and lodged by George, and (2) that the transcript was sufficiently accurate for use and consideration by this court for purposes of this appeal. Counsel for George now brings this renewed motion for rule on clerk and points out again that the court reporter, Nila Keels, was not a certified court reporter at the time of George's trial.

He further states that due to the passage of time, he is unable to certify with any certainty that the transcript of the lower court proceedings is accurate. Moreover, he asserts that he is unwilling to do so. Nevertheless, he moves for a rule on clerk and requests that this court direct the Supreme Court Clerk to file the transcript.

In the alternative, he requests a new trial. The State responds that it is unclear from George's motion whether George's counsel actually reviewed the transcript prepared by Ms. Keels. In the absence of such an averment, the State urges this court to deny his motion and direct the Supreme Court Clerk to accept the transcript for purposes of this appeal.

In support of its argument, the State submits the affidavit of Curtis Hitt, Deputy Prosecuting Attorney for Green County, in which he states under oath that he prosecuted George and that he has reviewed the transcript and attached exhibits. Hitt avers that with the exception of insignificant clerical errors the trial transcript appears to be a fair and accurate record of the trial.

Our procedure for filing a record prepared by an uncertified court reporter was set out in *Mitchell v. State*, 345 Ark. 359, 45 S.W.3d 846 (2001)(per curiam). There, we specified that our Supreme Court Clerk would only be directed to accept a record prepared by an uncertified court reporter upon certification by the attorneys of record by means of affidavits that the transcript was true, accurate, and complete.

In the case before us, we have a certification by the prosecuting attorney, together with a finding of sufficient accuracy by the trial court. Defense counsel has refused to certify the transcript due to the passage of time, but it is he who moves this court for a rule on clerk to require the clerk to file the transcript. Other than his general reference to the “passing of time,” defense counsel provides this court with no identified defects in the transcript or other reason for his refusal to certify.

We hold that the trial court’s order finding sufficient accuracy for appeal purposes and the prosecuting attorney’s affidavit certifying the transcript to be a fair and accurate record of George’s trial satisfy the Mitchell requirements.

The motion, accordingly, is granted. Corbin and Hannah, JJ., would deny.