

SUPREME COURT OF ARKANSAS

Mitchem v. State

363 Ark. 451 (2005) · Decided October 6, 2005

SUMMARY

The Arkansas Supreme Court grants Robert Lee Mitchem’s petition for a writ of certiorari to complete the record in his criminal appeal. The court directs the Craighead County Circuit Court clerk to file a certified supplemental record within thirty days, while limiting the additional time granted to complete the record to thirty days.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Arkansas
DECIDED	October 6, 2005
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Petition for a writ of certiorari to complete the appellate record after the petitioner was unable to obtain another extension of time to file the record.
PRECEDENTIAL VALUE	precedential
PARTIES	Robert Lee Mitchem v. State

TOPICS

- writ of certiorari
- appellate procedure
- criminal procedure

PRACTICE AREAS

- appellate procedure
- criminal procedure

QUESTIONS PRESENTED

- Whether the Arkansas Supreme Court should issue a writ of certiorari under Rule 3-5 to permit completion of the appellate record after the petitioner had exhausted the available extensions of time.
- Whether the petitioner was entitled to an additional sixty days to complete the record.

HOLDINGS

1. The Arkansas Supreme Court granted the petition and directed issuance of a writ of certiorari requiring the clerk of the Craighead County Circuit Court to complete and file a certified supplemental record.
2. Mitchem was not entitled to the requested additional sixty days; the court granted only the thirty-day period authorized by Rule 3-5.

KEY QUOTATIONS

“If the appellant is unable to obtain entry of an order of extension before expiration of the period prescribed by subdivision (a) of this rule or a prior extension order, the appellant may file with the clerk of the Supreme Court a petition for writ of certiorari pursuant to Rule 3-5 of the Rules of the Supreme Court and Court of Appeals.” (363 Ark. 451)

FACTUAL BACKGROUND

A judgment and commitment order entered on December 3, 2004, convicted Mitchem of kidnapping and attempted rape. Although he timely filed a notice of appeal, the court reporter had not begun preparing the transcript and was unaware of the appeal until several months later. Mitchem obtained extensions totaling seven months from entry of judgment, filed a partial record on July 1, 2005, and sought an additional sixty days to complete the record.

PROCEDURAL HISTORY

Mitchem was convicted of kidnapping and attempted rape and timely filed a notice of appeal. After obtaining prior extensions, he filed a partial record and petitioned the Arkansas Supreme Court for certiorari under Rule 3-5 to obtain additional time to complete the record. The Supreme Court granted the petition and directed the Craighead County Circuit Court clerk to prepare and file a certified supplemental record.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

A writ of certiorari shall issue to the clerk of the Circuit Court of Craighead County to complete and file a certified supplemental record with the Arkansas Supreme Court clerk within thirty days from the date of the per curiam opinion. A briefing schedule was to be set after filing.

OPINION

PER CURIAM.

Per Curiam. Robert Lee Mitchem, by and through his attorney, has filed a petition for a writ of certiorari to complete the record pursuant to Rule 3-5 of the Rules of the Supreme Court. Petitioner filed a certified partial record on July 1, 2005, and this petition on July 6, 2005.

We grant the petition. A judgment and commitment order was filed on December 3, 2004, convicting Petitioner of kidnapping and attempted rape. Petitioner filed a timely notice of appeal. However, when Petitioner's attorney called the court reporter several months later to check on the transcript, he learned that the court reporter had not yet begun to work on it.

In a letter dated February 16, 2005, responding to the attorney's phone call, the court reporter stated that, until the attorney's phone call, he had been unaware of Petitioner's appeal, had not received a notice of appeal, had received no request for a transcript, and had not been contacted by Petitioner's attorney or anyone else regarding financial arrangements for the transcript.

Therefore, prior to the ninety-day deadline for tendering the record, Petitioner filed a motion for an extension of time for filing the record, which was granted. The order granting the motion extended the deadline for an additional ninety days from March 6, 2005. See Ark. R. App. P.-Crim. 4; Ark. R. App. P.-Civ. 5(b). Ninety days from March 6, 2005, was June 4, 2005.

On June 1, 2005, Petitioner filed a second motion for extending the time to file the record. The court granted the motion, extending the time to file the record for an additional thirty days from June 3, 2005. Therefore, the record was due July 3, 2005, seven months from entry of the judgment and commitment order.¹ Consequently, Petitioner was unable to obtain an additional extension of time.

Rule 5(b)(3) of the Arkansas Rules of Appellate Procedure - Civil states that, If the appellant is unable to obtain entry of an order of extension before expiration of the period prescribed by subdivision (a) of this rule or a prior extension order, the appellant may file with the clerk of the Supreme Court a petition for writ of certiorari pursuant to Rule 3-5 of the Rules of the Supreme Court and Court of Appeals.

Ark. R. App. P. — Civ. 5(b)(3). Petitioner filed a partial record on July 1, 2005, the last day of his extended period.² Petitioner is requesting an additional sixty days to complete the record. Rule 3-5 authorizes an additional thirty days to complete the record, and Petitioner has offered no compelling reasons to justify granting additional time.

Therefore, we grant the petition and direct that a writ of certiorari be issued to the clerk of the Circuit Court of Craighead County to complete and file a certified supplemental record with our clerk within thirty days from the date of this per curiam. At that time, a briefing schedule will be set. Petition granted. Glaze, J., dissenting in part.

We note that the trial court has authority to grant additional extensions of time in certain situations pursuant to Rule 5(b) of the Arkansas Rules of Appellate Procedure — Civil. Rule 5(b) provides, however, that in no event shall the time be extended more than seven months from the date of entry of the judgment. Ark. R. App. P. — Civ. 5 (b) July 3, 2005, was a Sunday.

