

SUPREME COURT OF ARKANSAS

Crippen v. State

2017 Ark. 25 (2017) · No. CR-17-25 · Decided February 9, 2017

SUMMARY

The Supreme Court of Arkansas granted James Edward Crippen’s motion for rule on clerk, allowing his criminal appeal to proceed despite the untimely filing of the appellate record. The court held that the record was due seven months after the sentencing order and that counsel had erred by failing to timely lodge it.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Arkansas
DECIDED	February 9, 2017
DOCKET	CR-17-25
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Appellant moved for a rule on the clerk directing the clerk to file the record on appeal so that his criminal appeal could proceed.
PRECEDENTIAL VALUE	published and precedential
PARTIES	James Edward Crippen v. State of Arkansas

TOPICS

- appellate procedure
- criminal procedure
- preservation of error

PRACTICE AREAS

- criminal appellate procedure
- criminal procedure

QUESTIONS PRESENTED

- Whether the circuit court could extend the time for filing the appellate record beyond seven months from the entry of the sentencing order.
- Whether the Supreme Court should grant a motion for rule on clerk when the record was not timely lodged because of appellant's counsel's error, so that a criminal defendant's first appeal could proceed.

HOLDINGS

1. Under Arkansas Rule of Appellate Procedure-Criminal 4(c)(2), the time for filing the record may not be extended more than seven months from the date of entry of the judgment or order, or from the date a timely post-judgment motion is deemed disposed of, whichever is later.
2. The court granted the motion for rule on clerk because, although the record was untimely due to counsel's error, a criminal defendant should not be deprived of consideration of his first appeal based on counsel's failure to follow appellate rules.

KEY QUOTATIONS

“In no event shall the time for filing the record be extended more than seven (7) months from the date of the entry of the judgment or order, or from the date on which a timely post-judgment motion is deemed to have been disposed of under Arkansas Rule of Appellate Procedure –Criminal 2(b), whichever is later.” (2017 Ark. 25, at 1)

“It is plain from the motion and record before us that there was error on appellant’s attorney’s part in failing to timely lodge the record.” (2017 Ark. 25, at 2)

FACTUAL BACKGROUND

The Crawford County Circuit Court entered a sentencing order on May 13, 2016. Crippen filed a notice of appeal on June 10, 2016, and later sought an extension of time to file the transcript and lodge the appeal. The circuit court entered an order purporting to extend the time to lodge the record until January 10, 2017, but the seven-month maximum period expired on December 13, 2016. The failure to timely lodge the record resulted from an error by appellant's attorney.

PROCEDURAL HISTORY

The Crawford County Circuit Court entered a sentencing order on May 13, 2016, and Crippen filed a notice of appeal on June 10, 2016. The circuit court later purported to extend the deadline for lodging the record until January 10, 2017, but the Supreme Court of Arkansas determined that the applicable seven-month deadline expired on December 13, 2016. Although the record was not timely lodged because of appellant's counsel's error, the court granted the motion for rule on clerk to allow the criminal appeal to proceed.

DISPOSITION

writ_granted

CASES CITED

- Morris v. State, 373 Ark. 190, 192, 282 S.W.3d 757, 758 (2008)
- Coakes v. State, 2013 Ark. 325, 429 S.W.3d 209
- McDonald v. State, 356 Ark. 106, 116, 146 S.W.3d 883, 891 (2004)
- Lee v. Arkansas Department of Human Services, 2016 Ark. 87 (per curiam)

OPINION

Crippen v. State

2017 Ark. 25

PER CURIAM.

Cite as 2017 Ark. 25 SUPREME COURT OF ARKANSAS. No. CR-17-25 JAMES EDWARD CRIPPEN Opinion Delivered February 9, 2017

APPELLANT

MOTION FOR RULE ON CLERK

V.

STATE OF ARKANSAS

APPELLEE MOTION GRANTED.

PER CURIAM

Appellant James Edward Crippen, by and through his attorney Ryan Norris, has filed a motion for rule on clerk asking this court to direct our clerk to file the record on appeal. Counsel asserts that the record was timely when it was tendered on January 4, 2016. As explained below, the record was not timely pursuant to our rules, but we nonetheless grant the motion so that appellant's criminal appeal may proceed. See *Morris v. State*, 373 Ark. 190, 192, 282 S.W.3d 757, 758 (2008) (the State cannot penalize a criminal defendant by declining to consider his first appeal when counsel has failed to follow appellate rules). On May 13, 2016, the Crawford County Circuit Court entered a sentencing order, and on June 10, 2016, appellant filed a notice of appeal. On August 22, 2016, appellant filed a motion for extension of time to file transcript and lodge appeal in the court of appeals. On August 31, 2016, the circuit court entered an order making the findings required by Arkansas Rule of Appellate Procedure –Criminal 4(c)(1) (2016) and purporting to extend the time to lodge the record until January 10, 2017. At issue in the present motion is Rule 4(c)(2), which provides that “[i]n no event shall the time for filing the record be extended Cite as 2017 Ark. 25 more than seven (7) months from the date of the entry of the judgment or order, or from the date on which a timely post-judgment motion is deemed to have been disposed of under Arkansas Rule of Appellate Procedure –Criminal 2(b), whichever is later.” Here, the record was due on December 13, 2016, which is seven months from the date of the sentencing order. *Coakes v. State*, 2013 Ark. 325, 429 S.W.3d 209 (a circuit court may not extend the time for filing the record more than seven months from the date of the entry of the judgment or order); see also *Morris*, supra (seven-month deadline for filing record on appeal is calculated from date of original judgment). In *McDonald v. State*, 356 Ark. 106, 116, 146 S.W.3d 883, 891 (2004), we said: Where an appeal is not timely perfected, either the party or attorney filing the appeal is at fault, or there is good reason that the appeal was not timely perfected. The party or attorney filing the appeal is therefore faced with two options. First, where the party or attorney filing the appeal is at fault, fault should be admitted by affidavit filed with the motion or in the motion itself. There is no advantage in declining to admit fault where fault exists. Second, where the party or attorney believes that there is good reason the

appeal was not perfected, the case for good reason can be made in the motion, and this court will decide whether good reason is present. While this court no longer requires an affidavit admitting fault before we will consider the motion, an attorney should candidly admit fault where he or she has erred and is responsible for the failure to perfect the appeal. *Lee v. Arkansas Dep't of Human Servs.*, 2016 Ark. 87 (per curiam). It is plain from the motion and record before us that there was error on appellant's attorney's part in failing to timely lodge the record. Pursuant to *McDonald*, we grant the motion for rule on clerk. Motion granted. 2