

SUPREME COURT OF ARKANSAS

Steven Lee Smith v. State of Arkansas, 372 Ark. 217

272 S.W.3d 105 (2008) · No. No. CR 08-12 · Decided January 24, 2008

SUMMARY

The Supreme Court of Arkansas granted Steven Lee Smith's motion for rule on clerk after his attorney candidly admitted responsibility for failing to timely perfect the appeal. The court applied McDonald v. State and directed that a copy of the opinion be forwarded to the Committee on Professional Conduct.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Arkansas
DECIDED	January 24, 2008
DOCKET	No. CR 08-12
DISPOSITION	other
PROCEDURAL POSTURE	Appellant moved for a rule on the clerk to accept and docket the record for his criminal appeal after the clerk rejected the transcript as untimely.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Steven Lee Smith v. State of Arkansas

TOPICS

- appellate procedure
- criminal procedure
- preservation of error

PRACTICE AREAS

- Criminal appellate procedure
- Appellate practice

QUESTIONS PRESENTED

1. Whether the Supreme Court of Arkansas should grant a motion for rule on clerk when counsel admits fault for failing to timely perfect the appeal.

2. Whether the time for lodging the appellate record under Arkansas Rule of Appellate Procedure–Civil 5(b)(2) could be calculated from the date of the amended judgment and commitment order.

HOLDINGS

1. When an appeal is not timely perfected because the attorney is at fault, the attorney should candidly admit fault, and the Supreme Court may grant the motion for rule on clerk.
2. The court did not decide whether the record-filing period could be calculated from the amended judgment because counsel alternatively admitted fault, providing a sufficient basis to grant the motion.

KEY QUOTATIONS

“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.” (106)

FACTUAL BACKGROUND

Smith received a judgment and commitment order on May 24, 2007, and an amended order on June 5, 2007. His attorney designated the May 24 order in the notice of appeal but later obtained an extension calculated from the June 5 amended order, causing the record to be lodged after the clerk determined the permissible filing period had expired. Counsel ultimately admitted that he was at fault for miscalculating the deadline.

PROCEDURAL HISTORY

Smith was convicted of fleeing, second-degree battery, two counts of aggravated assault, and leaving the scene of an accident with personal injury. After entry of an original and amended judgment and commitment order, counsel filed a notice of appeal and obtained extensions to lodge the record. The clerk rejected the record as filed beyond the permissible seven-month period, and counsel moved for a rule on clerk while admitting responsibility for the miscalculation.

DISPOSITION

other

CASES CITED

- McDonald v. State, 356 Ark. 106, 146 S.W.3d 883 (2004)

OPINION

PER CURIAM.

272 S.W.3d 105 (2008) Steven Lee SMITH, Appellant, v. STATE of Arkansas, Appellee. No. CR 08-12. Supreme Court of Arkansas. January 24, 2008. Scott A. Ellington, for appellant. No response. MOTION FOR RULE ON CLERK PER CURIAM. Appellant Steven Lee Smith, by and through his attorney, Scott A. Ellington, has filed a motion for rule on clerk to file his record and have his appeal docketed.

Smith was convicted of fleeing, second-degree battery, two counts of aggravated assault, and leaving the scene of an accident with personal injury. A judgment and commitment order reflecting his convictions was entered on May 24, 2007, and an amended judgment and commitment order was entered on June 5, 2007. Mr. Ellington filed a notice of appeal on June 20, 2007, designating the May 24, 2007, order as the order appealed from.

On September 13, 2007, the time for filing the record on appeal was extended from September 18, 2007, until November 19, 2007, due to the court reporter's request for additional time to prepare the record. After discussing the matter with the court reporter, Mr. Ellington determined that the court reporter would need the full seven months from the date of the judgment in which to complete the transcript.

Accordingly, Mr. Ellington obtained an additional order from the trial court on September 13, 2007, extending the time for filing the record until January 3, 2008, a date that fell within seven months from the judgment entered on June 5, 2007. See Ark. R.App. P.-Civ. 5(b)(2) (2007). Mr. Ellington attempted to lodge the transcript with our clerk's office on January 3, 2008, but the clerk's office rejected it, saying that the trial court was without jurisdiction to extend the time for the filing of the record beyond December 24, 2007, or seven months from the date of the entry of the first judgment and commitment order.

Mr. Ellington therefore filed the instant motion for rule on clerk on January 3, 2008, arguing that Rule 5(b)(2) permits the extension of time for lodging the record on appeal to be calculated from the latest date of entry of a judgment and commitment order.

However, he cites no authority in support of this argument. In the alternative, Mr. Ellington accepts responsibility for miscalculating the time *106 to file the record. This court clarified its treatment of motions for rule on clerk and motions for belated appeals in *McDonald v. State*, 356 Ark. 106, 146 S.W.3d 883 (2004). There we said that there are only two possible reasons for an appeal not being timely perfected: either the party or attorney filing the appeal is at fault, or, there is "good reason."

McDonald v. State, 356 Ark. at 116, 146 S.W.3d at 891. We explained: 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. *Id.*, 146 S.W.3d at 891 (footnote omitted). While this court no longer

requires an affidavit admitting fault before we will consider the motion, an attorney should candidly admit fault where he has erred and is responsible for the failure to perfect the appeal.

See *id.* In accordance with *McDonald v. State*, *supra*, Mr. Ellington has candidly admitted fault. The motion is, therefore, granted. A copy of this opinion will be forwarded to the Committee on Professional Conduct. Motion granted.