

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)