Cite as 2018 Ark. App. 211

# ARKANSAS COURT OF APPEALS

DIVISION III
No. CR-17-554

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| | | Opinion Delivered: March 28, 2018 |
| FREDERICK T. JONES | APPELLANT | APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, FIRST DIVISION [NO. 60CR-16-2307] |
| V. | | |
| STATE OF ARKANSAS | APPELLEE | HONORABLE LEON JOHNSON, JUDGE |
| | | AFFIRMED |

**BART F. VIRDEN, Judge**

Frederick T. Jones appeals from the circuit court's dismissal of his appeal from district court on the ground that he did not comply with the requirements of Rule 36(c) of the Arkansas Rules of Criminal Procedure. We affirm.

On February 6, 2016, Jones was stopped by an Arkansas State Trooper and cited for improper towing and failure to use a car seat. Jones pleaded not guilty and was tried in district court. Jones was found guilty of both offenses and ordered to pay $405 in fines and court costs.

Jones informed the district court clerk that he wanted to appeal to the circuit court and verbally requested that the clerk prepare the record. The district court clerk prepared the record, which Jones timely filed with the Pulaski County Circuit Clerk.

The State filed a motion to dismiss Jones's appeal on the ground that he had not complied with Arkansas Rule of Criminal Procedure 36(c), which requires that an appellant from district court must file a written request for the record with the district court clerk, serve that request on the prosecutor for the judicial district, and then file that service with the district court. Jones responded, presenting two arguments against dismissal: (1) the written-request requirement does not apply to a defendant who has timely filed the record with the circuit court, and (2) the written-request requirement in Arkansas Rule of Criminal Procedure 36(c) is procedural and should not be strictly construed.

After a hearing on the matter, the circuit court dismissed and remanded the appeal, holding that though Jones timely filed the record with the circuit court, he failed to file a written request with the district court clerk to prepare a certified copy of the record, he failed to serve a copy of the request on the prosecuting attorney for the sixth judicial district, and he did not file a certificate of service of a written request with the district court. Jones filed a timely notice of appeal.[1]

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[1]On August 16, 2017, Jones filed a motion to transfer this case to the Arkansas Supreme Court, which was denied in a letter order dated November 9, 2017.

We construe court rules using the same principles and canons of construction used to interpret our statutes. *McNabb v. State*, 367 Ark. 93, 97, 238 S.W.3d 119, 122 (2006). The first rule of statutory construction in considering the meaning and effect of a statute is to construe it just as it reads, giving the words their ordinary and usually accepted meaning in common language. *Roberson v. State*, 2010 Ark. 433, at 2. When the language is plain and unambiguous, there is no need to resort to other rules of statutory construction. *Id.* The word "shall" indicates mandatory compliance unless such an interpretation would lead to an absurdity. *Turley v. State*, 2013 Ark. App. 427, at 4-5, 429 S.W.3d 293, 295.

On appeal, Jones raises two main arguments. First, he argues that our court misinterpreted Arkansas Rule of Criminal Procedure 36(c) in *Fewell v. State*, 2014 Ark. App. 631, and our holding in that case should be overturned. Second, Jones requests that this court issue a writ of certiorari instructing the circuit court to rescind its dismissal.

Jones's argument regarding *Fewell* is twofold: he argues that the three requirements in Rule 36(c) do not apply to everyone, i.e., when appellant timely files the record in the circuit court, a written request, the service requirement to the district prosecutor that a written request has been made, and the filing of that notice, are redundant; alternatively, he asserts that strict interpretation of the mandatory language in Rule 36(c) is unwarranted because filing with the district court and service of the district court prosecutor are procedural matters and are not jurisdictional. Jones's arguments are not well taken, and we affirm.

Pursuant to Arkansas Rule of Criminal Procedure 36(a), a person convicted of a criminal offense in a district court may appeal the judgment of conviction to the circuit court for the judicial district in which the conviction occurred. *Barner v. State*, 2015 Ark. 247, at 4, 464 S.W.3d 450, 452. Arkansas Rule of Criminal Procedure 36(c) sets forth the manner in which an appeal from district court is perfected:

> (c) How Taken. An appeal from a district court to circuit court shall be taken by filing with the clerk of the circuit court a certified record of the proceedings in the district court. Neither a notice of appeal nor an order granting an appeal shall be required. The record of proceedings in the district court shall include, at a minimum, a copy of the district court docket sheet and any bond or other security filed by the defendant to guarantee the defendant's appearance before the circuit court. *It shall be the duty of the clerk of the district court to prepare and certify such record when the defendant files a written request to that effect with the clerk of the district court and pays any fees of the district court authorized by law therefor. The defendant shall serve a copy of the written request on the prosecuting attorney for the judicial district and shall file a certificate of such service with the district court.* The defendant shall have the responsibility of filing the certified record in the office of the circuit clerk. Except as otherwise provided in subsection (d) of this rule, the circuit court shall acquire jurisdiction of the appeal upon the filing of the certified record in the office of the circuit clerk.

(Emphasis added.)

In *Fewell*, the appellant made a verbal request to the district court clerk for a certified copy of the record, who then supplied a copy. Fewell timely filed the record with the circuit court. Fewell explained that he was told that his actions were sufficient to perfect his appeal, and he pointed out that he was a pro se client relying on the advice of court officials. This court held that the circuit court correctly dismissed and remanded Fewell's appeal from the district court because he failed to perfect his appeal.

Jones argues that our holding in *Fewell* misinterprets Rule 36(c). Specifically, Jones asserts that the written-request route is one of two ways to perfect an appeal to circuit court. He argues that Rule 36 allows for a second option: filing the district court record with the circuit court. Once the record is filed, Jones argues, the requirement for filing the written request at the district court level is redundant, procedural, and not mandatory. He is incorrect. First, the plain language of the rule is clear that the written-request requirement is mandatory, as are the service and filing requirements. The word "shall" appears at four critical points in the rule: the clerk shall be charged with the duty of preparing a record after the defendant files a written request, the defendant shall serve a copy of the written request on the district prosecutor, the defendant shall file that service with the district clerk, and the circuit court shall acquire jurisdiction after the filing of the record with its clerk. As we stated above, the word "shall" indicates mandatory compliance unless that interpretation leads to an absurdity. *See Turley*, *supra*. Because the written filing of a request for the record, the service of that request, and the filing of that service all serve to provide notice to the judicial district prosecutor and the district court, there can be no argument that the result of mandatory compliance with Rule 36 is absurd.

Second, we have held that the provisions of the predecessor to Rule 36, District Court Rule 9, are jurisdictional and not procedural. In *Velek v. State (City of Little Rock)*, 364 Ark. 531, 535, 222 S.W.3d 182, 185 (2006) our supreme court held that

> [i]t is true that the District Court Rules are mandatory and jurisdictional, and that failure to comply with those rules mandates dismissal of an appeal. *See J & M Mobile Homes, Inc. v. Hampton*, 347 Ark. 126, 60 S.W.3d 481 (2001) (requiring strict compliance with Rule 9); *Pike Avenue Dev. Co. v. Pulaski County*, 343 Ark. 338, 37 S.W.3d 177 (2001); *Pace v. Castleberry*, 68 Ark. App. 342, 7 S.W.3d 347 (1999) (Rule 9's thirty-day limit for filing an appeal is both mandatory and jurisdictional, and the failure to either file the record with the clerk or file an affidavit showing the record has been requested from the clerk within those thirty days precludes the circuit court from having jurisdiction over the appeal).

The principle remains the same for Rule 36. Arkansas Rule of Criminal Procedure 36(c) clearly sets forth that filing a written request for the record with the district court clerk is the mandatory first step in perfecting an appeal. Failure to establish jurisdiction at the circuit court level forecloses a finding of jurisdiction in this court. *Roberson*, 2010 Ark. 433, at 6. Jones failed to establish jurisdiction by not fulfilling the requirements of Rule 36, and we affirm the dismissal of his case.[2]

We need not decide Jones's request for a writ of certiorari. Not only is Jones's request moot, had we reversed the dismissal, the correct remedy would be to remand his appeal to the circuit court. *See Ark. Game & Fish Comm'n v. Herndon*, 365 Ark. 180, 183,

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[2]In *Fewell*, 2014 Ark. App. 631, at 2, we stated that to perfect his appeal, appellant was required to serve a copy of the certified record of the district court proceeding on the prosecuting attorney for the district. We should have stated that appellant was required to serve a copy of the *written request* for the record on the prosecuting attorney for the judicial district and to also file that request with the district court clerk. The analysis remains the same, and our holding in *Fewell* is not affected by our clarification.

226 S.W.3d 776, 779 (2006) (There can be no other adequate remedy but for the writ of certiorari.).

Affirmed.

GLADWIN and VAUGHT, JJ., agree.

*William R. Simpson, Jr.*, Public Defender, and *Andrew Thornton*, of Counsel, for appellant.

*Leslie Rutledge*, Att'y Gen., by: *Adam Jackson*, Ass't Att'y Gen., for appellee.