

Cite as 2009 Ark. 416

SUPREME COURT OF ARKANSAS

No. CR 09-948

AVERY DARNELL WILLIAMS,
APPELLANT,

VS.

STATE OF ARKANSAS,
APPELLEE,**Opinion Delivered** SEPTEMBER 17, 2009

MOTION FOR RULE ON CLERK

GRANTED.**PER CURIAM**

Appellant, Avery Darnell Williams, by and through his counsel, Clint Miller, has filed the instant motion for rule on clerk. The State has not responded to the motion. Our clerk refused to accept the record because the order granting the extension of time in which Appellant could file the record was not timely entered.

Appellant was convicted in Pulaski County Circuit Court of theft of property and of being a habitual offender. A judgment and commitment order was entered on January 28, 2009, and a timely notice of appeal was filed on February 26, 2009. On May 20, 2009, Appellant filed a timely motion, pursuant to Ark. R. App. P.–Crim. 4(c), requesting an extension of time to file the record on appeal. The circuit court signed an order granting the extension on May 27, 2009, finding that good cause had been shown for the extension and that the State had been notified and did not object. The order, however, was not entered of record until May 28, 2009, ninety-one days after the record was due to be filed.

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Pursuant to Rule 4(c), the circuit court may order an extension of time to file the record if such order is entered before expiration of the ninety-day time period provided for in Ark. R. App. P.–Crim. 4(b). Thus, in the instant case, the May 28 order granting the extension was untimely. Counsel for Appellant accepts fault for the untimely filing of the order. We view this matter under Rule 4 as we do a violation of Ark. R. App. P.–Civ. 5. As counsel has accepted fault, we grant the motion for rule on clerk. See *McDonald v. State*, 356 Ark. 106, 146 S.W.3d 883 (2004). A copy of this opinion will be forwarded to the Arkansas Supreme Court Committee on Professional Conduct.

Motion granted.