

Cite as 2011 Ark. 52

SUPREME COURT OF ARKANSAS

No. CR11-71

DAVID SMOAK

APPELLANT

VS.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered February 9, 2011

MOTION FOR RULE ON CLERK

GRANTED.**PER CURIAM**

Appellant David Smoak, by and through his attorney, Candice A. Settle, has filed a 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 to file the record was not timely entered.

On June 4, 2010, a Pulaski County jury convicted appellant of internet stalking of a minor and sentenced him to eight years in the Arkansas Department of Correction. Appellant timely filed his notice of appeal on June 24, 2010. When it became apparent that the court reporter could not prepare the transcript within the ninety-day time limit, pursuant to Arkansas Rule of Appellate Procedure–Crim. 4(b) (2010), appellant filed a motion for extension of time to file the record on September 9, 2010. The circuit court granted the motion and extended the time for filing the record by seven months. Appellant provided a proposed order, but the circuit court requested modifications to the order. On September 21, 2010, appellant provided a second proposed order to extend the time. However, that order

Cite as 2011 Ark. 52

was not filed until September 23, 2010, which was ninety-one days after the filing of the notice of appeal.

Pursuant to Arkansas Rule of Appellate Procedure–Crim. 4(c) (2010), 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, pursuant to Rule 4(b). Thus, in the instant case, the September 23, 2010 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 Arkansas Rule of Appellate Procedure–Civ. 5 (2010). Because 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.