

Cite as 2011 Ark. 130

SUPREME COURT OF ARKANSAS

No. CR10-1068

KARL D. ROBERTS,

APPELLANT,

VS.

STATE OF ARKANSAS,

APPELLEE,

Opinion Delivered March 31, 2011MOTION TO FILE BELATED
BRIEFGRANTED.**PER CURIAM**

Appellant Karl D. Roberts, by and through his attorney, Jenniffer Horan, moves this court to file a belated brief. Roberts's brief, after a forty-five day final extension, was due on January 6, 2011. On January 6, 2011, Roberts timely tendered a noncomplying brief along with a motion to file an enlarged brief. On January 27, 2011, that motion was granted in part and denied in part. He then tendered his brief on January 31, 2011, at which time he filed a motion to file belated brief. On February 9, 2011, the motion was denied without prejudice for noncompliance with Arkansas Supreme Court Rule 4-1. Roberts then filed a motion for clarification on February 11, 2011, which this court granted on March 3, 2011, referring counsel to Arkansas Supreme Court Rule 4-1(a) font size and type. He then tendered his corrected brief to this court's clerk on March 7, 2011, at which time he filed the instant motion.

We will accept a criminal appellant's belated brief to prevent an appeal from being aborted. *See Stewart v. State*, 319 Ark 242, 889 S.W.2d 771 (1995). However, good cause

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must be shown to grant the motion. *See, e.g., Strom v. State*, 356 Ark. 224, 147 S.W.3d 689 (2004) (per curiam) (holding that appellate counsel’s admitted failure to timely file the brief constituted good cause to grant motion for belated brief); *Brown v. State*, 347 Ark. 362, 64 S.W.3d 274 (2002) (per curiam) (holding that attorney’s admitted error was good cause to grant the motion); *James v. State*, 329 Ark. 58, 945 S.W.2d 941 (1997) (per curiam).

Here, Ms. Horan states in the motion that Roberts was sentenced to death and appeals from the denial of Rule 37 relief. In the motion to file an enlarged brief that was previously filed with this court, Ms. Horan’s co-counsel, Josh Lee, stated that all of the issues presented in Roberts’s Rule 37 petition were meritorious “in that each could prevail at some stage of Mr. Roberts’s case.” Mr. Lee further stated in that motion that counsel, in good faith, made an earnest effort to distill each claim to its clearest form, but simply could not comply with the page limitation. The motion that is now before this court states that “on March 3, 2011 counsel submitted and obtained approval of a compliant typeface from the clerk of the court.”

We have been resolute that criminal cases involving the death penalty will be treated with unique attention. *See, e.g., Robbins v. State*, 353 Ark. 556, 561, 114 S.W.3d 217, 220 (2003) (“There is no question but that the death penalty is a unique punishment that demands unique attention to procedural safeguards.”). To that end, we have established specific criteria for the appointment of qualified and competent counsel to represent indigent defendants under a sentence of death in postconviction matters. *See Ark. R. Crim. P. 37.5; Lee v. State*, 367 Ark. 84, 238 S.W.3d 52 (2006).

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For the reasons set forth by Ms. Horan and because this case is one involving the death penalty, we hold that good cause to grant the motion has been shown. We, therefore, grant Roberts's motion to file belated brief.

Motion granted.