

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

IN RE: ROY C. LEWELLEN

ARKANSAS BAR ID #82093

CPC DOCKET No. 2000-134

FINDINGS AND ORDER

The formal charges of misconduct arose from the Arkansas Supreme Court case of Terrance Robinson and Tamagum Antonio Robinson v. State of Arkansas, CR 99-112. Roy Lewellen, an attorney practicing in Marianna, Arkansas, represented the Robinsons in an appeal to the Arkansas Supreme Court in the above-mentioned matter. The matter was heard at a *de novo* public hearing on August 16, 2002.

The Robinsons were represented at trial by other counsel and were each found guilty of discharging a firearm in public; Terrence Robinson was additionally convicted of being a felon in possession. Following the trial, a Motion for New Trial was filed by the Robinsons' former attorney on May 10, 1999. The Judgment and Commitment Orders were not filed of record, however, until May 24, 1999. A hearing was set on the Motion for New Trial on July 8, 1999, and, following the hearing on the Motion for New Trial, a Notice of Appeal was filed by Mr. Lewellen on July 8, 1999.

On October 18, 2000, the Arkansas Supreme Court issued an opinion. In its opinion, the Arkansas Supreme Court stated that

"...the posttrial motions for a new trial were void and of no effect because they were filed before the judgments were entered. The notice of appeal in this case was filed forty-five days after the entry of the judgments. Since the posttrial motions did not extend the period of time in which to appeal due to their ineffectiveness, the appeal is untimely."

Robinson v. State, 342 Ark. 384, 39 S.W.3d 432 (2000)

On November 16, 2000, Mr. Lewellen filed a Motion for Reinstatement of Appeal/Belated Appeal requesting the Arkansas Supreme Court allow the Robinsons' appeal be allowed to proceed. In his Motion, Mr. Lewellen stated that he failed to recognize that the Judgment and Commitment Order had been filed after the post-trial motion and therefore resulted in the motion being declared void. Mr. Lewellen attached to his motion an affidavit wherein he stated that he "...assume[d] total responsibility for [the Robinsons'] case after the trial and a jury Finding of Guilty." Further, Mr. Lewellen stated in his affidavit that he "accept[s] full responsibility in not recognizing the technical defect on my clients' Appeal. This Appeal was not taken for delay, and I firmly believe that the Appellants have meritorious issues to be reviewed by this Court. I understand that my negligence violates the Rules of Professional Conduct and the standard expectation of an attorney in the representation of his clients."

The Arkansas Supreme Court granted Mr. Lewellen's Motion for Belated Appeal on November 16, 2000. The Court forwarded a copy of the Per Curiam Order to the Office of Professional Conduct.

A formal complaint alleging violations of the Model Rules of Professional Conduct was prepared and served upon Mr. Lewellen. Mr. Lewellen filed a timely response. Following an unfavorable decision by Panel A of the Committee on Professional Conduct, Mr. Lewellen filed a timely request for a *de novo* hearing before Panel B of the Committee on Professional Conduct. A hearing was held before Panel B of the Committee on Professional Conduct on August 16, 2002.

The Office of Professional Conduct presented a copy of the October 18, 2000 opinion of the Arkansas Supreme Court which dismissed the appeal of Mr. Lewellen's clients, Terrance Robinson and Tamagum Antonio Robinson; Mr. Lewellen's Motion to Reinstate Appeal/Motion for Belated Appeal; and the November 16, 2000 Arkansas Supreme Court Per Curiam Order granting Mr. Lewellen's Motion for Belated Appeal.

Mr. Lewellen testified that he did not dispute the facts which led to the referral from the Arkansas Supreme Court. Mr. Lewellen stated that he relied upon Rule 2(a)(2) which states that a notice of appeal should be filed within thirty (30) days from the date of entry of an order denying a post-trial motion under Arkansas Rules of Criminal Procedure 33.3. ARCrP 33.3, in 1999, stated, in part, that " a person convicted of either a felony or misdemeanor may file a motion for new trial, a motion in arrest of judgment, or any other applications must be filed prior to the time fixed to file a notice of appeal." Arkansas Code Annotated §16-89-130(b) also provides that "the application for a new trial must be made at the same term at which the verdict is rendered, unless the judgment is postponed to another term in which case it may be made at any time before judgment." Mr. Lewellen stated that he relied upon the Arkansas Rules of Criminal Procedure, the Arkansas Code provision, and the Arkansas Supreme Court Rules of Criminal Procedure Rule 2(a)(2). Mr. Lewellen stated that was not aware of the case of *Brown v. State*, 333 Ark 698, 970 S.W.2d 287 (1998) wherein the court decided that posttrial motions were ineffective because they were filed before the judgment was entered. Mr. Lewellen referred to the case as "hidden" as that case was not listed in the case notes following Arkansas Code Annotated §16-89-130(b).

Upon consideration of the formal complaint, the response herein, testimony received, and the Arkansas Model Rules of Professional Conduct, the Committee on Professional Conduct went into executive session and returned with the following findings:

1. That Mr. Lewellen's conduct violated Model Rule 1.1 when he failed to file a timely Notice of Appeal. Model Rule 1.1 requires that a lawyer provide competent representation to a client, including the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.
2. That Mr. Lewellen's conduct violated Model Rule 1.3 when he did not file a Notice of Appeal on behalf of his clients until forty-five (45) days after the entry of the Judgment and Commitment Orders. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct that ROY LEWELLEN, Arkansas Bar ID #82093, be, and hereby is, CAUTIONED, for his conduct in this matter.

ARKANSAS SUPREME COURT COMMITTEE

ON PROFESSIONAL CONDUCT

By:

Richard F. Hatfield

Chairman

Date:
