

Court of Appeals of the State of Georgia

ATLANTA, JANUARY 31, 2002

The Court of Appeals hereby passes the following order:

A02A0845. RAYMOND DONALDSON v. THE STATE

The above appeal was docketed in this Court on December 19, 2001. Pursuant to the rules of this Court, the Appellant's Brief, Part II of which is the Enumeration of Errors, was due on January 8, 2002. On January 7, 2002, this Court received a Motion for Extension of Time filed by appellant's appointed counsel and as grounds for the extension reported that counsel is a sole practitioner and had an extensive trial and hearing schedule in the United States District Court, Rome Division and Floyd County Superior and Juvenile Courts during the past month and that counsel was to be on a criminal trial calendar in Federal court the weeks of January 7 and 14 and had been unable to complete his research and prepare the Brief and Enumeration of Errors due to his court schedule. Notwithstanding counsel's prioritization of other court matters before his obligation to his client and this Court, the Court granted an extension of time to file Appellant's Brief by this Court's order of January 10, 2002, until January 28, 2002.

Rather than file a Brief on January 28, 2002 as ordered by this Court in its grant of an extension, counsel for appellant filed a second Extension of Time to file Brief and Enumeration of Errors, and as grounds therefore states that counsel is a sole

practitioner, has an extensive trial and hearing schedule in the United States District Court, Rome Division and Floyd County Superior and Juvenile Courts during the past month. Counsel also states there was a delay in his receipt of the complete transcript of the trial and that counsel has been unable to complete his research and prepare Brief and Enumeration of Errors due to his court schedule and the delay in securing the transcript.

This Court is unimpressed with what appears to be a regurgitation of the grounds for the first request for an extension of time. This Court is specifically unimpressed with counsel's statement that counsel has been unable to secure a transcript.

This Court notes that this is the second docketing of this appeal, the first docketing of this appeal having been A02A0127. Raymond Donaldson v. The State. That appeal was docketed on August 30, 2001 and was dismissed after this Court denied a second extension of time by appellant's former appointed counsel.

This Court notes that with the previous docketed appeal, two transcripts were filed with the Court of Appeals which leads this Court to believe that a transcript of evidence and proceedings has been on file in the Clerk of Superior Court of Floyd County since on or before August 30, 2001.

This Court is confounded by the actions of first counsel and second counsel. It appears that the defendant has been incarcerated since on or before May 23, 2001, and while the appeal was originally docketed with this Court on August 30, 2001, there has yet to be a brief filed on behalf of the appellant, enumerating any alleged

errors of the trial court, frustrating this Court's ability to consider the appeal.

Pursuant to OCGA §5-6-43(c), "[w]here a defendant in a criminal case is confined in jail pending appeal, it shall be the duty of the clerk to state that fact in his certificate; and it shall be the duty of the appellate court to expedite disposition of the case." The appellate courts of Georgia have a constitutional requirement to dispose of every case at the term for which it is entered on the Court's docket for hearing or at the next term. See Ga. Const. 1983 Article VI, Section IX, Paragraph II. Once an appeal is docketed with this Court, the constitutional mandate attaches.

This Court has been frustrated in its attempts to comply with the Constitution and laws of this state by appointed counsels' inability or unwillingness to file a brief and enumeration of errors in support of the appellant. This Court was required to dismiss the initial appeal, but dismissal of a subsequent appeal only further frustrates the ability of this Court to permit the appellant to have his constitutional right of an initial appeal.

Upon consideration of appellant's counsel's Motion for Extension of Time and the above history of these appeals, said motion is hereby DENIED. However, counsel for appellant is ordered and directed to file a brief in this appeal by February 8, 2002, said brief to be **physically** filed with this Court by that time.

Counsel for appellant is directed to Rule 7 of this Court which states that the failure to comply with an order of this Court subjects the offending party and/or attorney to contempt and may subject the appeal to dismissal. Counsel is further reminded that upon a finding of conduct constituting contempt, the Court may impose

a fine not to exceed \$1,000.00 against the contemner or revoke the license to practice in this Court, or both.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN 31 2002

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Clerk.

William Z. Martin, III