

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

MAY 15 2012

MICHAEL S. RICHIE
CLERK

DORIS JEAN WHITAKER,)	
)	
Appellant,)	NOT FOR PUBLICATION
)	
v.)	Case No. F 2012-294
)	
STATE OF OKLAHOMA,)	
)	
Appellee)	

**ORDER GRANTING MOTION TO REVERSE CONVICTION AND REMAND FOR
NEW TRIAL BASED UPON LACK OF ADEQUATE RECORD ON APPEAL**

Appellant, Doris Jean Whitaker, filed pleadings with this Court alleging that the appeal record was incomplete with regard to the trial transcript in McCurtain County District Court case number CF-2010-488. An appeal was initiated in this Court and the proper designations of record were filed and served on the court reporters. This Court remanded the matter to the district court for findings of fact regarding the completeness of the record on appeal.

The parties entered into a stipulation that a court reporter was present at Appellant's trial. The stipulation included the fact that the McCurtain County court reporters and the trial court have thoroughly searched for tapes or other evidence of the transcription of the trial, but no evidence has been found. Upon receipt of the stipulation, this Court entered an order finding the appeal record complete as filed, although "no transcript of the non-jury trial held on November 21, 2011, in this case can be prepared for the appeal." This Court set a briefing schedule at that time. Appellant filed his appeal brief and motion

to reverse for lack of adequate record on appeal on January 4, 2013, and the State filed its response brief on March 5, 2013.

Appellant, as his sole proposition of error argues that, through no fault of his own, the failure to provide a trial transcript denies him his right to meaningful appellate review in violation of the United States and Oklahoma Constitutions and the case should be reversed for a new trial. The State concedes that the conviction should be reversed and remanded to the district court for a new trial.

It is the duty of the court reporter to assemble the original trial transcript for appeal purposes. Rule 2.2(B)(2), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2013). In the event that the transcripts cannot be filed, the court reporter must submit an affidavit showing why the transcripts have not been completed and filed. Rule 3.2(C)(2), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2013).

Affidavits from the court reporters have been filed with the district court stating the reasons why the trial transcript has not been completed. The reasons are consistent with the stipulation of the parties; after a diligent search, neither court reporter has been able to locate any notes, tapes or any other data that would enable the reporters to prepare a trial transcript for appeal.

When a trial transcript cannot be procured, through no fault of a

defendant, a case must be remanded to the trial court for a new trial, as the appellant has been denied a "statutory right to a complete and accurate transcript." *Whitmire-Harris v. State*, 1993 OK CR 51, ¶ 20, 863 P.2d 1255, 1258. We find that the transcript of Appellant's non-jury trial cannot be completed, due to no fault of Appellant.

Based upon the stipulation of the parties and the briefs filed herein, we order Appellant's conviction **REVERSED** and **REMANDED** to the district court for a new trial. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2013), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 15th day
of May, 2013.



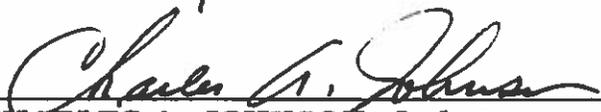
DAVID B. LEWIS, Presiding Judge



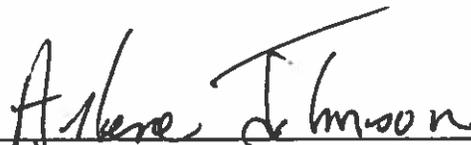
CLANCY SMITH, Vice Presiding Judge



GARY L. LUMPKIN, Judge



CHARLES A. JOHNSON, Judge



ARLENE JOHNSON, Judge

ATTEST:



Clerk