

WILLIE WEAH, Appellant, v.
REPUBLIC OF LIBERIA, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FOURTH JUDICIAL
CIRCUIT, MARYLAND COUNTY.

Argued October 27, 1966. Decided December 16, 1966.

Failure to file a bill of exceptions within the statutorily prescribed period of time is not ground for dismissal of an appeal when the appellant proves, by postal receipt for a registered letter, that the bill of exceptions was timely tendered to the trial court.

On appeal from a judgment of conviction on a verdict of guilt of manslaughter, the Republic's *motion* for dismissal was *denied*.

David A. T. Browne for appellant. *Solicitor General Nelson William Broderick* and *Assistant Attorney General Roland Barnes*, for appellee.

MR. JUSTICE ROBERTS delivered the opinion of the Court.

From the records certified to this Court, defendant William Weah was indicted in the Circuit Court of the Fourth Judicial Circuit, Maryland County, sitting in its criminal assizes division, during the August 1964 term for the crime of manslaughter. The indictment charged that, while driving a motor vehicle from Sedekeh to Barake, the defendant hit and killed a Bassa boy by the name of Dweey.

The case came for trial before His Honor Lewis K. Free during the November 1964 term of court. After the evidence *pro et con*, the jury, on the 7th day of December, returned a verdict of guilty against the defendant, and on the 17th day of December said verdict was con-

firmed and affirmed by the trial judge. Appellant, not being satisfied with the final judgment, took exceptions thereto and announced an appeal to this Honorable Court for review of the proceedings of the lower court. But before we could open the records to ascertain whether the appeal was meritorious or not, the Solicitor General filed a motion to dismiss the appeal, in which motion he stated that the appellant did not file his bill of exceptions within statutory time, and I quote this one-count motion:

“Because appellant has failed to file his bill of exceptions within statutory time as the law mandatorily requires, appellee submits that final judgment was rendered on the 17th day of December, 1964, but that appellant did not file his bill of exceptions until the 6th day of January, 1965, approximately 20 days after final judgment, contrary to law, and requests this Honorable Court to take judicial notice of the bill of exceptions certified to it by the clerk of the court below.”

The appellant, resisting this motion, stated that he did prepare a bill of exceptions within the 10 days allowed him by law but that the presiding judge had already left the county. The appellant further stated that, fearing that the statutory time would elapse, he posted the bill of exceptions and appeal bond through the Harper Post Office, as Registered Letter No. 2938. The Post Office receipt, marked Exhibit A, was made profert to form a part of appellant's resistance and bears a date in harmony with allegations contained in defendant's resistance.

In the first instance, all circuit judges are to remain within their various assignments 10 days after the adjournment of their jury sessions, thus giving litigants opportunity to file all documents necessary to prosecute their cases. From an inspection of the records, Judge Free left his assignment before the expiration of the 10 days. This obviously prejudiced the interest of the present appellant. Moreover this Court has held that:

“A bill of exceptions need not necessarily be approved within ten days after final judgment, provided it can be satisfactorily established that it was tendered within ten days after said final judgment.” *Rottger v. Williams*, 5 L.L.R. 348 (137) Syllabus 1.

Speaking for this Court in the *Rottger* case, *supra*, Mr. Justice Grigsby said, at 5 L.L.R. 351:

“It appears to us that if it can be proven by a registered letter receipt or otherwise that the bill of exceptions was indeed *tendered* to the judge of the trial court within ten days, then the date of the judge’s approval does not matter.”

This Court, from an inspection of the postal receipt, is satisfied that the defendant-appellant did comply with the controlling law. The motion to dismiss the appeal is therefore denied. And it is hereby so ordered.

Motion denied.