

Cite as 2009 Ark. 583

**SUPREME COURT OF ARKANSAS**

No. CR-09-1182

JAMES E. CLEMONS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered November 19, 2009

MOTION FOR RULE ON CLERK

MOTION GRANTED.

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**PER CURIAM**

Appellant, James Clemons, by and through his attorney, Rickey Hicks, seeks a motion for rule on clerk. The State has not filed a response.

Appellant was convicted of capital murder in the Union County Circuit Court on March 26, 2009, and sentenced to life imprisonment without parole. A timely notice of appeal was filed on April, 17, 2009. Pursuant to an order of the circuit court, the time for filing the record was extended to October 26, 2009. The record was not tendered to this court, however, until October 27, 2009.

This court clarified its treatment of motions for rule on clerk in *McDonald v. State*, 356 Ark. 106, 146 S.W.3d 883 (2004). There, we said that there are only two possible reasons for an appeal not being timely perfected: either the party or attorney filing the appeal is at fault, or there is “good reason.” *Id.* at 116, 146 S.W.3d at 891. We explained:

Where an appeal is not timely perfected, either the party or attorney filing the appeal is at fault, or there is good reason that the appeal was not timely perfected. The party or attorney filing the appeal is therefore faced with two options. First, where the party or attorney filing the appeal is at fault, fault should be admitted by affidavit filed with the motion or in the motion itself. There is no advantage in declining to admit fault where fault exists. Second,

where the party or attorney believes that there is good reason the appeal was not perfected, the case for good reason can be made in the motion, and this court will decide whether good reason is present.

*Id.* at 116, 146 S.W.3d at 891 (footnote omitted). While this court no longer requires an affidavit admitting fault before we will consider the motion, an attorney should candidly admit fault where he has erred and is responsible for the failure to perfect the appeal. *See McDonald*, 356 Ark. 106, 146 S.W.3d 883.

Because Mr. Hicks admits that he failed to timely file the record, we grant the motion for rule on clerk. A copy of this opinion will be forwarded to the Arkansas Supreme Court Committee on Professional Conduct.

Motion granted.