

SUPREME COURT OF ARKANSAS

No. CR09-939

DAVID DANIELS

PETITIONER

v.

STATE OF ARKANSAS

RESPONDENT

Opinion Delivered December 3, 2009

PRO SE MOTIONS FOR BELATED APPEAL, TO ADD EXHIBITS, AND TO ADMIT EVIDENCE [CIRCUIT COURT OF WASHINGTON COUNTY, CR 2005-2864, HON. KIM M. SMITH, JUDGE]

MOTIONS DENIED.

PER CURIAM

In 2007, a jury found petitioner David Daniels guilty of possession of cocaine and possession of drug paraphernalia and sentenced him to an aggregate term of 360 months' imprisonment in the Arkansas Department of Correction. The Arkansas Court of Appeals affirmed the judgment. *Daniels v. State*, CACR07-647 (Ark. App. Jan. 30, 2008). Petitioner timely filed a petition for postconviction relief under Rule 37.1 of the Arkansas Rules of Criminal Procedure. The trial court denied the petition by order entered September 23, 2008.

Petitioner has now filed the pending motion in this court, in which he seeks to pursue an appeal of the order denying postconviction relief, a second motion seeking to supplement the first motion with additional exhibits, and a third motion in which he requests this court's consideration of documents concerning his medical treatment that were attached. In his motion for belated appeal, petitioner alleges that he filed a timely notice of appeal, that the



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circuit clerk failed to lodge the record, and that he was delayed in filing this petition because he has been on medication for a back injury since June 2008.

Although petitioner contends that he filed a notice of appeal on October 14, 2008, and attaches a copy of the docket listing for the trial court that indicates that a notice of appeal was filed on that day, petitioner has not provided a certified copy of the notice of appeal. If the notice of appeal were contained in the record, we would treat the motion for belated appeal as a motion for rule on clerk to lodge the record under Rule 2(e) of the Arkansas Rules of Appellate Procedure—Crim. See *Ester v. State*, 2009 Ark. 442 (per curiam) (citing *Mitchem v. State*, 374 Ark. 157, 286 S.W.3d 679 (2008) (per curiam)). The notice of appeal is not, however, contained in the record.

A petitioner who seeks relief in this court has the burden to bring up a sufficient record upon which to grant that relief. See *Davidson v. State*, 363 Ark. 86, 210 S.W.3d 887 (2005). It is well settled that an appellant bears the burden of producing a record that demonstrates error, and this court does not consider matters outside of the record on appeal. *Miles v. State*, 350 Ark. 243, 85 S.W.3d 907 (2002). Because the record is deficient, we do not treat the motion as one for rule on clerk.

A petitioner has the right to appeal an adverse ruling on a petition for postconviction relief. *Scott v. State*, 281 Ark. 436, 664 S.W.2d 475 (1984) (per curiam). With that right goes the responsibility to comply with our rules of procedure. This court will consider a belated appeal under the exceptions in Rule 2(e) only when a petitioner shows good reason for the



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failure to follow our rules of procedure. See *Peterson v. State*, 289 Ark. 452, 711 S.W.2d 830 (1986) (per curiam). All litigants, including those who proceed pro se, must bear responsibility for conforming to the rules of procedure or demonstrating a good cause for not doing so. *Marshall v. State*, 2009 Ark. 420 (per curiam). Petitioner has not established good cause for his failure to comply with our rules of procedure.

As noted, petitioner does not provide a reason as to any failure to file the notice of appeal because he avers that he has timely filed the notice. He simply does not establish that allegation through a sufficient record. Even if petitioner were to provide an adequate record to establish a timely notice of appeal, his reasons for the failure to lodge the record in this court in a timely matter would not be sufficient.

Petitioner complains that the circuit clerk failed to file the record and appears to place the responsibility for lodging the record on the clerk. It is not the responsibility of the circuit clerk, the circuit court, or anyone other than the appellant, to perfect an appeal. *Ester*, 2009 Ark. 442, at 2; *Marshall*, 2009 Ark. 420, at 2; *Branning v. State*, 363 Ark. 369, 214 S.W.3d 237 (2005) (per curiam). Petitioner also contends that he was so impaired by medications for his back that he could not follow our procedural rules. That allegation, however, is not consistent with his claim that he was sufficiently well to file a notice of appeal within the period he claims that he took the medication. Because petitioner has failed to provide good cause for his failure to comply with our rules of procedure, the motion for belated appeal is denied.



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We also deny petitioner’s requests in the other two motions that he be permitted to add exhibits to his motion or submit other materials because the items he would have us consider do not support his motion for belated appeal. Other than the referenced docket sheet attached to the motion for belated appeal, there is no reference in the motion for belated appeal to any exhibits. The documents that petitioner would attach as exhibits or have this court consider as “evidence” are not from the time at issue and appear to have no bearing on the motion.

Motions denied.

David Daniels, pro se petitioner.

No response.