

ARKANSAS SUPREME COURT

No. 08-1358

JAIRO MONTGOMERY
Petitioner

v.

LARRY NORRIS, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION
Respondent

Opinion Delivered February 12, 2009

PRO SE MOTION FOR BELATED
APPEAL OF ORDER [CIRCUIT
COURT OF LEE COUNTY, CV 2007-
158, HON. L. T. SIMES, JUDGE]

MOTION DENIED.

PER CURIAM

Jairo Montgomery, who is in the custody of the Arkansas Department of Correction, filed a petition for writ of habeas corpus in the circuit court in the county in which he was incarcerated. The petition was denied on January 11, 2008.

Petitioner Montgomery did not file a notice of appeal within the thirty-day period allowed for filing a notice of appeal under Arkansas Rule of Appellate Procedure—Civil 4(a). He now seeks leave to proceed with a belated appeal of the order.

Petitioner contends that he should be permitted to proceed with the appeal because the Circuit Court of Lee County did not forward a copy of the order that denied the habeas petition to him and he was unaware of the order until after the thirty-day period to file a notice of appeal had elapsed. He points to the fact that he tendered a pro se petition for writ of mandamus to this court in mid-2008, contending that the habeas petition had not been ruled on, to support his claim that he was not

made aware of the order.

There is nothing in the record to show that the circuit clerk in fact failed to forward a copy of the order to petitioner; but even if the order was not promptly forwarded to him after it was entered, there is no absolute duty imposed on a judge or clerk to notify a petitioner that a petition for writ of habeas corpus has been denied.¹ Litigants must bear responsibility for keeping abreast of orders entered which pertain to legal proceedings. The pro se litigant receives no special consideration in this regard. See *Gibson v. State*, 298 Ark. 43, 764 S.W.2d 617 (1989); see also *Bragg v. State*, 297 Ark. 348, 760 S.W.2d 878 (1988) (per curiam); *Peterson v. State*, 289 Ark. 452, 711 S.W.2d 830 (1986) (per curiam); *Walker v. State*, 283 Ark. 339, 676 S.W.2d 460 (1984) (per curiam); *Thompson v. State*, 280 Ark. 163, 655 S.W.2d 424 (1983) (per curiam).

If the petitioner fails to timely file a notice of appeal, a belated appeal will not be allowed absent a showing by the petitioner of good cause for the failure to comply with proper procedure. *Garner v. State*, 293 Ark. 309, 737 S.W.2d 637 (1987) (per curiam). This court has specifically held that it is not the responsibility of anyone other than the appellant to perfect an appeal. See *Sullivan v. State*, 301 Ark. 352, 784 S.W.2d 155 (1990) (per curiam).

The purpose of the rule setting time limitations on filing a notice or lodging a record is to eliminate unnecessary delay in the docketing of appeals. We have made it abundantly clear that we expect compliance with the rule so that appeals will proceed as expeditiously as possible. *Jacobs*

¹In contrast, Arkansas Rule of Criminal Procedure 37.3 (d), a provision of our postconviction remedy in criminal cases, does place the burden on the circuit clerk to promptly forward a copy of the order disposing of a petition under the rule to the petitioner. The failure of the clerk to act in accordance with the Rule 37.3(d) has been held to be cause to grant a motion for belated appeal. *Chiasson v. State*, 304 Ark. 110, 798 S.W.2d 927 (1990) (per curiam); *Porter v. State*, 287 Ark. 359, 698 S.W.2d 801 (1985) (per curiam).

v. State, 321 Ark. 561, 906 S.W.2d 670 (1995) (per curiam) (citing *Alexander v. Beaumont*, 275 Ark. 357, 629 S.W.2d 300 (1982) (per curiam)). It was the duty of petitioner to file a notice of appeal in a timely manner. As he did not do so and has not demonstrated good cause for the failure to do so, the motion to proceed with the appeal is denied.

Motion denied.

Brown, J., not participating.