

ARKANSAS SUPREME COURT

No. CR 08-1284

STACY TUBBS
a/k/a Stacey Tubbs
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered February 5, 2009

PRO SE MOTION FOR BELATED
APPEAL OF ORDER [CIRCUIT
COURT OF UNION COUNTY, CR
2005-432, HON. HAMILTON H.
SINGLETON, JUDGE]

MOTION GRANTED.

PER CURIAM

In 2006, petitioner Stacy Tubbs, who is also known as Stacey Tubbs, was found guilty by a jury of possession of a controlled substance with intent to deliver and sentenced as a habitual offender to life imprisonment. A fine of \$25,000 was imposed. We affirmed. *Tubbs v. State*, 370 Ark. 47, 257 S.W.3d 47 (2007).

Subsequently, petitioner timely filed in the trial court a pro se petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1. On August 24, 2007, the petition was denied. Petitioner filed an untimely notice of appeal from the order on December 7, 2007, and now seeks by pro se motion to proceed with a belated appeal of the order.

A petitioner has the right to appeal an adverse ruling on a petition for postconviction relief under Rule 37.1. *Scott v. State*, 281 Ark. 436, 664 S.W.2d 475 (1984) (per curiam). With that right, however, goes the responsibility to timely file a notice of appeal within thirty days of the date the order was entered in accordance with Arkansas Rule of Appellate Procedure–Civil 4(a). 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 some good cause for the failure to comply with proper procedure. *Garner v. State*, 293 Ark. 309, 737 S.W.2d 637 (1987) (per curiam).

Petitioner states that on approximately August 23, 2007, he received from the judge's case coordinator a copy of the order that would be entered August 24, 2007. The copy was of course not filemarked, and he waited to receive a filemarked copy of the order before filing his notice of appeal so that he could designate in the notice of appeal the date of the order from which the appeal was taken. He avers that he did not obtain a filemarked copy of the order from the clerk until November 29, 2007, and that he mailed the notice of appeal to the clerk within three days of having received the order.

Arkansas Rule of Criminal Procedure 37.3(d) provides that the circuit clerk must promptly provide the petitioner with a copy of the court's order when it is entered. This court will grant a belated appeal if the petitioner contends that the clerk failed to comply with Rule 37.3(d), and it cannot be determined from the record or other proof that the order was promptly forwarded to the petitioner. *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).

Here, the record does not reflect that the clerk mailed a copy of the order to petitioner in time for him to file a timely notice of appeal, and the State did not file a response to the motion for belated appeal with any proof that the order was promptly mailed to petitioner. Accordingly, the motion for belated appeal of the August 24, 2007, order is granted. Our clerk is directed to lodge the appeal record and set a briefing schedule.

Motion granted.