

Arthur Lee GRAIN *v.* STATE of Arkansas

655 S.W.2d 425

Supreme Court of Arkansas
Opinion delivered July 11, 1983

1. **APPEAL & ERROR — PETITIONER MAY WAIVE RIGHT TO APPEAL FROM DENIAL OF RULE 37 PETITION.** — Just as a convicted defendant may waive his right to appeal by failure without good cause to file a notice of appeal, a petitioner whose Rule 37 petition for postconviction relief is denied may also waive his right to appeal.
2. **APPEAL & ERROR — NO GOOD CAUSE FOR FAILING TO COMPLY WITH RULE FOR APPEAL GIVEN.** — Where appellant merely states in conclusory fashion that the notice of appeal was sent to the wrong place, he has not stated a good cause for failing to comply with the rules of appellate procedure.

3. **APPEAL & ERROR — IGNORANCE OF RULES IS NOT A GOOD CAUSE TO PERMIT BELATED APPEAL.** — Ignorance of proper procedure alone is not good cause to permit a belated appeal.

Pro Se Motion for Belated Appeal; motion denied.

Appellant, *pro se*.

Steve Clark, Atty. Gen., by: Theodore Holder, Asst. Atty. Gen., for appellee.

PER CURIAM. The Circuit Court of Pulaski County denied the appellant Arthur Lee Grain's *pro se* petition for postconviction relief on March 25, 1983. Appellant did not file a notice of appeal, and he now asks this Court to allow him a belated appeal.

Appellant states that he mailed a notice of appeal to the circuit judge "on time." He accuses the circuit court of failing to act properly, by which he apparently means that the circuit judge was obligated to see that his notice was properly filed. He does not say when it was mailed, merely that it was timely; he does not say when it was received.

Just as a convicted defendant may waive his right to appeal by failure without good cause to file a notice of appeal, a petitioner whose Rule 37 petition for postconviction relief is denied may also waive his right to appeal. *Barton v. State*, 278 Ark. 159, 644 S.W.2d 272 (1983). Appellant clearly knew of his appeal right. He gives no good cause for failing to exercise that right by filing a timely notice of appeal with the circuit clerk. If merely stating in conclusory fashion that the notice of appeal was sent to the wrong place were a ground for granting a belated appeal, an appellant would feel little obligation to comply with the rules of appellate procedure. Ignorance of proper procedure alone is not good cause to permit a belated appeal.

Motion denied.