

## James CHIASSON v. STATE of Arkansas

RC 90-58

798 S.W.2d 927

Supreme Court of Arkansas  
Opinion delivered December 10, 1990

1. APPEAL & ERROR — WHEN COURT WILL GRANT BELATED APPEAL OF ORDER DENYING PETITION FOR POST-CONVICTION RELIEF. — The court will grant a belated appeal of an order denying a petition for post-conviction relief if good cause is shown for the petitioner's failure to file a timely notice of appeal.
2. APPEAL & ERROR — BELATED APPEAL — SHOWING OF GOOD CAUSE. — Good cause can be established by the petitioner where the state is unable to demonstrate that the circuit clerk promptly provided the petitioner with a copy of the court's order as required by Criminal Procedure Rule 37.3.
3. APPEAL & ERROR — MOTION FOR BELATED APPEAL GRANTED. — Where the petitioner contended that he was not provided a copy of the court's order until after the time for filing a timely notice of appeal had elapsed, and it was assumed from the lack of any objection by the state that the state was unable to demonstrate that the circuit clerk complied with Criminal Procedure Rule 37.3, the court permitted the record on appeal to be lodged.

Pro Se Motion for Rule on the Clerk; granted.

*Appellant*, pro se.

No response.

PER CURIAM. The petitioner James L. Chiasson pleaded guilty in 1986 to one count of incest. In 1989 he filed a timely petition to vacate the conviction. The petition was styled a petition for post-conviction relief pursuant to Criminal Procedure Rule 37, or in the alternative, a petition for writ of habeas corpus. The petition was denied and an order entered January 23, 1990. The petitioner, who did not file a timely notice of appeal with the circuit clerk, has now tendered the record to this court. He seeks a rule on the clerk to lodge the record despite the untimely notice of appeal.

[1-3] We will grant a belated appeal of an order denying a petition for post-conviction relief if good cause is shown for the petitioner's failure to file a timely notice of appeal. *Peterson v.*

*State*, 289 Ark. 452, 711 S.W.2d 830 (1986). We have held that good cause can be established by the petitioner where the state is unable to demonstrate that the circuit clerk promptly provided the petitioner with a copy of the court's order as required by Criminal Procedure Rule 37.3. Here, the petitioner contends that he was not provided a copy of the order until March 13, 1990, after the time for filing a timely notice of appeal had elapsed. As the state has indicated that it has no objection to the granting of the motion for rule on the clerk, it may be assumed that the state is unable to demonstrate that the circuit clerk complied with Rule 37.3. Therefore, we will permit the record on appeal to be lodged. *See Porter v. State*, 287 Ark. 359, 698 S.W.2d 801 (1985).

Motion granted.

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