

Dana WHITENER *v.* STATE of Arkansas

CR 06-106

229 S.W.3d 47

Supreme Court of Arkansas
Opinion delivered February 16, 2006

APPEAL & ERROR — MOTION FOR RULE ON CLERK — MOTION GRANTED.

— While the supreme court no longer requires an affidavit admitting fault before it considers the motion, an attorney should candidly admit fault where he has erred and is responsible for the failure to perfect the appeal, and Mr. Killough has candidly admitted fault.

Motion for Rule on Clerk; granted.

Killough Law Firm, by: *Larry Killough Jr.*, for appellant.

No response.

PER CURIAM. Appellant Dana Whitener, by and through her attorney, has filed a motion for rule on clerk. Her attorney, Larry Killough, Jr., states in the motion that the record was tendered late due to a mistake on his part.

[1] This court clarified its treatment of motions for rule on clerk and motions for belated appeals in *McDonald v. State*, 356 Ark. 106, 146 S.W.3d 883 (2004). There we said that there are only two

possible reasons for an appeal not being timely perfected: either the party or attorney filing the appeal is at fault, or, there is “good reason.” 356 Ark. at 116, 146 S.W.3d at 891. We explained:

Where an appeal is not timely perfected, either the party or attorney filing the appeal is at fault, or there is good reason that the appeal was not timely perfected. The party or attorney filing the appeal is therefore faced with two options. First, where the party or attorney filing the appeal is at fault, fault should be admitted by affidavit filed with the motion or in the motion itself. There is no advantage in declining to admit fault where fault exists. Second, where the party or attorney believes that there is good reason the appeal was not perfected, the case for good reason can be made in the motion, and this court will decide whether good reason is present.

Id., 146 S.W.3d at 891 (footnote omitted). While this court no longer requires an affidavit admitting fault before we will consider the motion, an attorney should candidly admit fault where he has erred and is responsible for the failure to perfect the appeal. *See id.*

In accordance with *McDonald v. State, supra*, Mr. Killough has candidly admitted fault. The motion is, therefore, granted. A copy of this opinion will be forwarded to the Committee on Professional Conduct.

Motion granted.