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John Otto DOWNING, Jr. *v.* STATE of Arkansas

CA CR 06-727

251 S.W.3d 243

Supreme Court of Arkansas  
Opinion delivered March 1, 2007

APPEAL & ERROR — MOTION FOR BELATED APPEAL — GRANTED WHERE ATTORNEY WAS AT FAULT. — In accordance with *McDonald v. State*, appellant's attorney candidly admitted fault, and the motion for belated appeal was therefore granted.

Motion for Belated Appeal; granted.

*Dick Jarboe*, for appellant.

No response.

**P**ER CURIAM. Appellant John Otto Downing, Jr., by and through his attorney, has filed a motion for belated appeal. His attorney, Dick Jarboe, states in the motion that he erred in filing a notice of appeal from Downing's entry of a conditional plea of guilty on April 6, 2006, rather than from the April 6, 2006 judgment, as required by Ark. R. Crim. P. 24.3(b) (2006). See *McDonald v. State*, 354 Ark. 28, 124 S.W.3d 438 (2003).

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 stated 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." *Id.* 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.

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*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.*

[1] In accordance with *McDonald v. State, supra*, Mr. Jarboe 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.

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