

Henry VIDAL *v.* STATE of Arkansas

CR 07-259

255 S.W.3d 475

Supreme Court of Arkansas
Opinion delivered April 12, 2007

APPEAL & ERROR — MOTION FOR RULE ON CLERK — ATTORNEY CANDIDLY ADMITTED FAULT — MOTION FOR BELATED APPEAL GRANTED.
— Where appellant's attorney candidly admitted fault for failing file a notice of appeal, the supreme court treated his motion for rule on clerk as a motion for belated appeal and granted the motion.

Motion for Rule on Clerk; motion for belated appeal granted.

Naif Samuel Khoury, for appellant.

No response.

PER CURIAM. Appellant Henry Vidal, by and through his attorney, has filed a motion for rule on the clerk, which we

will treat as a motion for belated appeal. His attorney, Naif Samuel Khoury, states in the motion that he failed to file a timely notice of appeal.

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.

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. Khoury 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.