

Susan WHITMAN *v.* STATE of Arkansas

CR 07-464

257 S.W.3d 901

Supreme Court of Arkansas
Opinion delivered May 31, 2007

APPEAL & ERROR — MOTION FOR RULE ON CLERK GRANTED — ATTORNEY ADMITTED ERROR. — Where appellant's attorney stated in his motion that he mistakenly filed the record three days after the deadline for filing the record, the supreme court granted his motion for rule on clerk in accordance with *McDonald v. State*.

Motion for Rule on Clerk, granted.

Susan Whitmore, for appellant.

No response.

PER CURIAM. Appellant Susan Whitman, by and through her attorney, has filed a motion for rule on clerk. Her

attorney, Don Cooksey, states in the motion that he mistakenly filed the record in this case on May 4, 2007, three days after the May 1, 2007 deadline for filing the record.

This court clarified its treatment of motions for rule on clerk and motions for belated appeal in *McDonald v. State*, 356 Ark. 106, 146 S.W.3d 883 (2004). In that case, 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 when he or she has erred and is responsible for the failure to perfect the appeal. *See id.*

[1] In accordance with *McDonald v. State, supra*, Mr. Cooksey has admitted that he confused the dates. The motion, is, therefore, granted. A copy of this opinion will be forwarded to the Committee on Professional Conduct.

Motion granted.