

Michael David KOSTER v. STATE of Arkansas

07-1160

269 S.W.3d 376

Supreme Court of Arkansas
Opinion delivered December 6, 2007

APPEAL & ERROR — ATTORNEY CANDIDLY ADMITTED FAULT — MOTION FOR RULE ON CLERK GRANTED. — Where, in accordance with *McDonald v. State*, appellant's attorney candidly admitted fault in connection with the untimely filing of an order granting an extension of time to file the record, the supreme court granted the motion for rule on clerk.

Motion for Rule on Clerk; granted.

Cindy Baker, for appellant.

No response.

PER CURIAM. Appellant Michael David Koster, by and through his attorney, has filed a motion for rule on the clerk. His attorney, Cindy M. Baker, states in the motion that our clerk has refused to accept her untimely tender of the record.

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*, Ms. Baker has candidly admitted fault in connection with the untimely filing of an order granting an extension of time to file the record. The motion for rule on the clerk is, therefore, granted. A copy of this opinion will be forwarded to the Committee on Professional Conduct.

Motion granted.