

Eric D. MARTIN *v.* STATE of Arkansas

CR 08-767

286 S.W.3d 680

Supreme Court of Arkansas
Opinion delivered September 4, 2008

MOTION FOR BELATED APPEAL — GRANTED WHERE APPELLANT'S ATTORNEY CANDIDLY ADMITTED FAULT. — Appellant's motion for rule on clerk was treated as motion for belated appeal, and because appellant's counsel candidly admitted that he did not file the notice of appeal within thirty days of the entry of the judgment, the motion was granted.

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

Phillip A. McGough, for appellant.

No response.

PER CURIAM. Appellant Eric D. Martin, by and through his attorney, Phillip A. McGough, has filed a motion for rule on clerk. On December 23, 1997, Appellant pled guilty to two counts of residential burglary, one count of theft of property, and one count of breaking or entering and was sentenced to probation for a total of thirty-six years on all counts. By judgment and commitment order entered February 20, 2008, Appellant's probation was revoked, and he was sentenced to a total of 432 months in the Arkansas Department of Correction. Appellant filed a notice of appeal on May 5, 2008, from the judgment and commitment order entered February 20, 2008. The record was tendered to the clerk of this court on June 26, 2008. The supreme court clerk refused to file the record because the notice of appeal was filed more than thirty days after the first judgment and commitment order was entered.

[1] Appellant's counsel filed this motion for rule on clerk, candidly admitting therein that he did not file the notice of appeal within thirty days of the entry of the judgment. Where a motion for rule on clerk is filed in error, it will be treated as a motion for belated appeal. *McDonald v. State*, 356 Ark. 106, 146 S.W.3d 883 (2004). Despite Appellant's failure to properly perfect this appeal, the State cannot penalize a criminal defendant by declining to

consider his appeal when counsel has failed to follow appellate rules. *Morris v. State*, 373 Ark. 190, 282 S.W.3d 757 (2008) (per curiam) (citing *Franklin v. State*, 317 Ark. 42, 875 S.W.2d 836 (1994) (per curiam)). Consistent with our explanation of handling motions for rule on clerk and belated appeals in *McDonald*, 356 Ark. 106, 146 S.W.3d 883, we consider this a motion for belated appeal and direct the clerk of this court to accept the record and docket the appeal. We forward this opinion to the Committee on Professional Conduct.

Motion treated as belated appeal; granted.
