

Rodney PANKAU *v.* STATE of Arkansas

CR 08-1389

289 S.W.3d 900

Supreme Court of Arkansas
Opinion delivered December 19, 2008

MOTIONS — MOTION FOR BELATED APPEAL — GRANTED WHERE ATTORNEY CANDIDLY ADMITTED ERROR. — In accordance with *McDonald v. State*, appellant's motion for belated appeal was granted where attorney candidly admitted fault.

Motion for Rule on Clerk; granted.

Kenneth R. Shemin, for appellant.

No response.

PER CURIAM. Appellant Rodney Pankau, by and through his attorney, Kenneth R. Shemin, has filed the instant motion for belated appeal. The circuit court entered a judgment and commitment order on September 30, 2008. The notice of appeal was due to be filed on October 30, 2008, but was not filed until October 31, 2008.

This court recently 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 said:

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.

356 Ark. at 116, 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 or she has erred and is responsible for the failure to perfect the appeal. *See id.* When it is plain from the motion, affidavits, and record that relief is proper under either rule based on error or good reason, the relief will be granted. *See id.* If there is attorney error, a copy of the opinion will be forwarded to the Committee on Professional Conduct. *See id.*

[1] In accordance with *McDonald*, Mr. Shemin 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.
