

Cite as 2011 Ark. 270

SUPREME COURT OF ARKANSAS

No. CR 11-503

ARCHIE L. ROSS
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered June 16, 2011

PRO SE MOTION FOR BELATED
APPEAL OF ORDER [CRITTENDEN
COUNTY CIRCUIT COURT, CR
2009-753, HON. RALPH E. WILSON,
JR.]

MOTION DENIED.

PER CURIAM

In 2009, petitioner Archie L. Ross was found guilty by a jury of attempted second-degree murder and attempted manslaughter. He was sentenced as a habitual offender to an aggregate term of 432 months' imprisonment. The Arkansas Court of Appeals affirmed. *Ross v. State*, 2010 Ark. App. 734.

Petitioner subsequently filed in the trial court a timely verified pro se petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2011). The court entered an order denying the petition on December 29, 2010. Petitioner did not timely file a notice of appeal from the order and now seeks leave to proceed with a belated appeal.

Arkansas Rule of Appellate Procedure—Criminal 2(a)(4) (2011) requires that a notice of appeal be filed within thirty days of the date an order denying postconviction relief was entered. The record lodged with the motion for belated appeal reflects that a copy of the

order was mailed to petitioner on the day it was entered, and petitioner does not claim that he did not receive it in time for him to file a timely notice of appeal. He filed the notice of appeal on Monday, February 28, 2011, which was sixty-one days after the order was entered.

Arkansas Rule of Appellate Procedure–Criminal 2(e) (2011) permits a belated appeal when good cause for the failure to file a timely notice of appeal is shown. If a notice of appeal is not timely filed, the burden is on the petitioner to establish good cause for the failure to comply with proper procedure. *Atkins v. State*, 2010 Ark. 392 (per curiam); *Cummings v. State*, 2010 Ark. 123 (per curiam); *Hale v. State*, 2010 Ark. 17 (per curiam); see *Garner v. State*, 293 Ark. 309, 737 S.W.2d 637 (1987) (per curiam). We have consistently held that this burden applies even where the petitioner proceeds pro se, as all litigants must bear the responsibility for conforming to the rules of procedure or demonstrating good cause for not so conforming. *Wright v. State*, 2010 Ark. 474 (per curiam); *Cummings*, 2010 Ark. 123; *Hale*, 2010 Ark. 17 (citing *Daniels v. State*, 2009 Ark. 607 (per curiam)); see also *Peterson v. State*, 289 Ark. 452, 711 S.W.2d 830 (1986) (per curiam); *Walker v. State*, 283 Ark. 339, 676 S.W.2d 460 (1984) (per curiam); *Thompson v. State*, 280 Ark. 163, 655 S.W.2d 424 (1983) (per curiam).

Petitioner argues that he should be allowed to proceed with an appeal because his failure to file a timely notice of appeal from the Rule 37.1 order stemmed from his lack of legal knowledge. He explains that he erroneously believed that he had sixty days to file the notice of appeal.

We do not find that petitioner has established good cause for his failure to conform to procedural rules. This court has specifically held that the mere declaration of ignorance of the

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rules of procedure does not constitute good cause for the failure to comply with procedural rules. *Wright*, 2010 Ark. 474; *Burgess v. State*, 2010 Ark. 34 (per curiam). If it were good cause to excuse lack of compliance, it would be just as well to have no rules, as an appellant could simply bypass the rules by claiming a lack of knowledge. See *Garner v. State*, 293 Ark. 309, 737 S.W.2d 637 (1987).

It is not the responsibility of anyone other than the appellant to perfect an appeal. *Wright*, 2010 Ark. 474; see *Ester v. State*, 2009 Ark. 442 (per curiam) (citing *Sullivan v. State*, 301 Ark. 352, 784 S.W.2d 155 (1990)). Here, petitioner failed to act to preserve his right to appeal the postconviction order, and he has not met his burden of demonstrating that there was good cause for the failure to do so.

Motion denied.