

SUPREME COURT OF ARKANSAS

No. CR 11-736

NAPOLEAN JOHNSON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered September 8, 2011

MOTION FOR RULE ON CLERK
TREATED AS MOTION FOR
BELATED APPEAL

GRANTED.

PER CURIAM

Appellant Napoleon Johnson, by and through his attorney, has filed a motion for rule on clerk. His attorney, Robert R. Cortinez, Sr., accepts fault and states in the motion that the clerk’s office rejected Johnson’s record due to an untimely notice of appeal. We therefore treat Johnson’s motion as one for belated appeal, and we grant it.

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 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 where he has erred and is responsible for the failure to perfect the appeal. *See id.*

In accordance with *McDonald, supra*, Mr. Cortinez has admitted fault. The motion is therefore granted. A copy of this opinion will be forwarded to the Committee on Professional Conduct.

Motion granted.