

SUPREME COURT OF ARKANSAS

No. CR 11-535

DALE HARVEY BROWN,
APPELLANT,

VS.

STATE OF ARKANSAS,
APPELLEE,

Opinion Delivered September 15, 2011

MOTION TO APPOINT COUNSEL;
MOTION FOR RULE ON CLERK

MOTIONS GRANTED.

PER CURIAM

Appellant Dale Harvey Brown now petitions this court to proceed in forma pauperis and requests this court to appoint Sharon Kiel as counsel to represent him in the instant appeal. Attached to his motion is an affidavit setting forth that Appellant is indigent. We hold that Appellant is indigent and, therefore, appoint Ms. Kiel to represent him in connection with this appeal.

Appellant, by and through Ms. Kiel, has also filed a motion for rule on clerk. Therein, Ms. Kiel admits fault for failing to timely file 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 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.” *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



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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. (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 McDonald*, 356 Ark. 106, 146 S.W.3d 883.

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

Motion for appointment of counsel granted; motion for rule on clerk granted.