

SUPREME COURT OF ARKANSAS

No. CR 11-91

GREGORY RAFAEL SMITH
PETITIONER

V.

STATE OF ARKANSAS
RESPONDENT

Opinion Delivered September 15, 2011

PRO SE MOTION FOR BELATED
APPEAL OF ORDER FAULKNER
COUNTY CIRCUIT COURT [CR 2009-
1375] HON. DAVID L. REYNOLDS

MOTION DENIED.

PER CURIAM

On May 25, 2010, judgment was entered reflecting that petitioner Gregory Rafael Smith had entered a plea of guilty to six felony criminal offenses. He was sentenced as a habitual offender to an aggregate term of 360 months' imprisonment.

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. Petitioner did not timely file a notice of appeal from the order, and he 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 six days after it was entered. Petitioner contends that this delay in sending him the order did not leave him enough time to file a timely notice of appeal, inasmuch as he was unable to get a library pass where he was incarcerated in order to get a form to file the



notice. In short, it is petitioner's claim that the circumstances of his incarceration prevented him from filing a timely notice of appeal.

Arkansas Rule of Appellate Procedure—Criminal 2(e) permits a belated appeal when good cause for the failure to file a timely notice of appeal is shown. *Ross v. State*, 2011 Ark. 270 (per curiam). 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. *Ross*, 2011 Ark. 270; *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). The pro se appellant receives no special consideration on appeal. *Watkins v. State*, 2010 Ark. 156, 372 S.W.3d 910 (per curiam). If this court were to accept an appeal with a late notice of appeal merely because an incarcerated appellant could point to some difficulty in complying with procedural requirements caused by his or her incarceration, there would be little use in promulgating procedural rules, as an appellant could simply bypass the rules by claiming the burden of incarceration or a lack of knowledge of procedure. See *Garner*, 293 Ark. 309, 737 S.W.2d 637.

While an incarcerated petitioner may face certain obstacles in conforming to procedural



rules, we take judicial notice that appeals from postconviction orders are frequently lodged in this court by incarcerated persons. The fact that those appeals are perfected by persons who also may be assumed to face certain hurdles occasioned by their incarceration suggests that the thirty days to file a notice of appeal is not unduly burdensome. By his own admission, petitioner had approximately three weeks to submit his notice of appeal to the circuit clerk. It was not necessary that a particular printed form be used for the notice. The records in many of the pro se postconviction appeals lodged with this court contain a handwritten notice of appeal.

We have made it abundantly clear that we expect compliance with the rules of this court so that appeals will proceed as expeditiously as possible. *Jacobs v. State*, 321 Ark. 561, 906 S.W.2d 670 (1995) (per curiam) (citing *Alexander v. Beaumont*, 275 Ark. 357, 629 S.W.2d 300 (1982) (per curiam)). 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.