

SUPREME COURT OF ARKANSAS

No. CR11-1252

LYDIA MARIE DELGADO

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered January 12, 2012MOTION TO FILE BELATED
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APPEAL DENIED.**PER CURIAM**

On April 9, 2010, Lydia Marie Delgado was sentenced to serve 36 months' imprisonment for possession of drug paraphernalia and 360 months' imprisonment for possession of methamphetamine with intent to deliver, to be served concurrently. The court of appeals affirmed her conviction on February 16, 2011. *Delgado v. State*, 2011 Ark. App. 124.

A petition for postconviction relief was sought by Delgado on May 6, 2011. The circuit court denied relief and entered an order to that effect on July 14, 2011. Delgado filed a notice of appeal on August 24, 2011, nine days late.

Now before us is Delgado's motion to file notice of appeal and designation of record out-of-time. As the notice of appeal was untimely, we treat the motion as a motion for

belated appeal pursuant to Rule 2(a)(4) of the Rules of Appellate Procedure—Criminal.

In the motion, counsel for Delgado states that he mailed the notice of appeal on August 12, 2011. The deadline was Monday, August 15, 2011.¹ Counsel states that on August 16, 2011, the notice was returned for insufficient postage. He then filed this motion with the clerk on August 24, 2011.

We have held that a petitioner has a right to appeal an adverse ruling on a petition for postconviction relief. *Daniels v. State*, 2009 Ark. 607 (per curiam) (citing *Scott v. State*, 281 Ark. 436, 664 S.W.2d 475 (1984) (per curiam)). With that right goes the responsibility to file a timely notice of appeal within thirty days of the date the order was entered in accordance with Rule 4(a). If the petitioner fails to file a timely notice of appeal, a belated appeal will not be allowed absent a showing by the petitioner of good cause for the failure to comply with proper procedure. *Leavy v. Norris*, 324 Ark. 346, 920 S.W.2d 842 (1996) (per curiam) (citing *Garner v. State*, 293 Ark. 309, 737 S.W.2d 637 (1987) (per curiam)).

Here, Delgado makes a base assertion that the notice of appeal was mailed. However, the rule does not contemplate that mailing is equivalent to filing with the clerk. An allegation that the notice of appeal was mailed is not good cause. The motion fails to establish that the clerk received the notice of appeal within thirty days of the order and fails to establish good

¹The time period to file the notice of appeal expired on Saturday, August 13, 2011. Therefore, the notice of appeal was due the following Monday. Ark. R. App. P.—Crim. 17 (2011).

cause for not filing a timely notice of appeal.

Motion for belated appeal denied.