

SUPREME COURT OF ARKANSAS

No. CR 11-1256

CHARLES CANNON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered February 9, 2012

MOTION FOR RECONSIDERATION
OR, IN THE ALTERNATIVE, MOTION
FOR BELATED APPEAL

MOTION FOR RECONSIDERATION
DENIED; MOTION FOR RULE ON
CLERK GRANTED.

PER CURIAM

Appellant Charles Cannon, by and through his attorney, Jason Horton, moves this court for reconsideration, or in the alternative, for a belated appeal. This court previously denied Cannon's motion for extension of time to file the record in light of Arkansas Rule of Appellate Procedure—Criminal 4(c)(3) (2011). We deny reconsideration of that denial, but we treat his alternative motion for belated appeal as one for rule on clerk, and we grant it.

In his motion for extension of time, filed on the date his record was due, December 14, 2011, Cannon stated that additional time was required due to the fact that the record had been sent directly to him, at the site of his incarceration, rather than to his attorney, on November 10, 2011. However, pursuant to Rule 4(c)(3), Cannon was required to first seek entry of an order of extension from the circuit court, or demonstrate to this court, by affidavit or otherwise, an inability to obtain such an order. This he did not do, and, accordingly, we denied his motion for extension of time. We deny the instant request for reconsideration of

our decision.

That being said, we clarified our 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:

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.

356 Ark. at 116, 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 or she has erred and is responsible for the failure to perfect the appeal. *See id.* When it is plain from the motion, affidavits, and record that relief is proper under either rule based on error or good reason, the relief will be granted. *See id.* If there is attorney error, a copy of the opinion will be forwarded to the Committee on Professional Conduct. *See id.*

It is plain from the motion and record before us that there was error on Mr. Horton's part. Because it is the filing of the record that is untimely in this case, we treat Cannon's alternative motion for belated appeal as one for rule on clerk. Pursuant to *McDonald, supra*, we grant Cannon's motion for rule on clerk and forward a copy of this opinion to the Committee on Professional Conduct.

Motion for reconsideration denied; motion for rule on clerk granted.