

SUPREME COURT OF ARKANSAS

No. CR-11-1176

TIMOTHY LAPLEZ DAVIS
PETITIONER

V.

STATE OF ARKANSAS
RESPONDENT

Opinion Delivered February 16, 2012

PRO SE MOTION FOR BELATED
APPEAL OF ORDER [HOT SPRING
COUNTY CIRCUIT COURT, CR
2008-105, HON. PHILLIP H.
SHIRRON, JUDGE]

MOTION DENIED.

PER CURIAM

On November 25, 2009, judgment was entered reflecting that petitioner Timothy LaPlez Davis had entered a plea of guilty to capital murder and had been sentenced to life imprisonment without parole. Ninety-six days after the judgment was entered, appellant filed in the trial court a pro se verified petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2011). The court held a hearing and determined that petitioner had indeed timely tendered the petition to the clerk within the ninety days allowed for filing a petition under Rule 37.2(c). The court considered the petition on its merits and denied relief in an order entered July 14, 2010. Petitioner did not perfect an appeal from the July 14, 2010 order, and he now seeks leave from this court to proceed with a belated appeal.

Arkansas Rule of Appellate Procedure—Criminal 2(e) (2011) permits a belated appeal when good cause for the failure to file a notice of appeal is shown. 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. *Smith v. State*, 2011 Ark. 637 (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).

Here, petitioner contends that he timely filed a notice of appeal on August 3, 2010, but the record filed with the motion for belated appeal does not contain a notice of appeal filed on that date, or on any date, that pertains to the July 14, 2010 order.¹ Petitioner offers no substantiation for his claim that he timely filed a notice of appeal, and the record does not support the assertion. The burden is entirely on the petitioner to bring up a record sufficient to support the petitioner's grounds for relief. See *Stevenson v. State*, 375 Ark. 318, 290 S.W.3d 5 (2008) (per curiam).

This court has consistently held that it is not the responsibility of the circuit clerk, circuit court, or anyone other than the appellant to perfect an appeal. *Smith*, 2011 Ark. 367; *Wright v. State*, 2010 Ark. 474 (per curiam); *Perry v. State*, 2010 Ark. 84 (per curiam); *Branning v. State*, 363 Ark. 369, 214 S.W.3d 237 (2005) (per curiam). All litigants, including those who proceed pro se, must bear responsibility for conforming to the rules of procedure or demonstrating a good cause for not doing so. *Ross v. State*, 2011 Ark. 270 (per curiam); *Marshall v. State*, 2009 Ark. 420 (per curiam); *Peterson v. State*, 289 Ark. 452, 711 S.W.2d 830

¹The record contains a pro se notice of appeal filed by petitioner in the trial court on May 7, 2010, that designates the order being appealed as having been entered April 30, 2010. The record, however, does not contain an order entered on that date. The record also contains an order entered August 22, 2011, in which the circuit court declares that petitioner is indigent and thus entitled to have the record prepared for appeal at public expense, but it is not clear what judgment or order is on appeal for which a record is required. The August 22, 2011 order may have been entered in response to a motion for transcript filed by petitioner on August 19, 2011, in which petitioner requested a record sufficient to proceed with an appeal from the July 14, 2010 order that denied his Rule 37.1 petition. It is likely that the record prepared by the clerk in response to the August 22, 2011 order was the record filed with the motion for belated appeal that is now before us.

(1986) (per curiam); *Walker v. State*, 283 Ark. 339, 676 S.W.2d 460 (1984) (per curiam); *see also Tarry v. State*, 353 Ark. 158, 114 S.W.3d 161 (2003) (per curiam). Because petitioner's only ground for granting a belated appeal is that he timely filed a notice of appeal and he has not substantiated that claim, he has failed to demonstrate that he should be permitted to proceed with a belated appeal of the July 14, 2010 order.

Motion denied.