

**SUPREME COURT OF ARKANSAS**

No. CR 12-90

GREG HOGUE  
PETITIONER

v.

STATE OF ARKANSAS  
RESPONDENT**Opinion Delivered** April 19, 2012PRO SE MOTION FOR RULE ON  
CLERK TO LODGE RECORD  
BELATEDLY [PULASKI COUNTY  
CIRCUIT COURT, CR 94-904]

MOTION DENIED.

**PER CURIAM**

On August 15, 2011, petitioner Greg Hogue filed a timely notice of appeal as to an order that dismissed his pro se petition for forensics testing under Act 1780 of 2001 Acts of Arkansas, as amended by Act 2250 of 2005 and codified as Arkansas Code Annotated sections 16-112-201 to -208 (Repl. 2006). The petition dismissed by the circuit court sought to challenge petitioner's capital-murder conviction through a writ of habeas corpus. Petitioner tendered the record for the appeal to this court on November 16, 2011, and our clerk declined to lodge the appeal because its tender was untimely. Petitioner now brings a motion in which he seeks to proceed with the appeal, and he requests that this court permit him to lodge the record belatedly. We deny the motion.

Our clerk rejected petitioner's tender of the record because it was submitted ninety-three days after the notice of appeal was filed. Arkansas Rule of Appellate Procedure—Criminal 4 (2011) requires that the record on appeal shall be filed with the clerk of the appellate court within ninety days from the filing of the notice of appeal, unless the time to lodge the record is

extended by the circuit court in accordance with the rule. Ark. R. App. P.–Crim. 4 (b). If the transcript of the trial record was not filed in the time prescribed, then a criminal defendant may file a motion for rule on clerk under Arkansas Rule of Appellate Procedure–Criminal 2(e). *See Murry v. State*, 2010 Ark. 367 (per curiam).

A petitioner has the right to appeal a ruling on a petition for postconviction relief. *Brewer v. State*, 2010 Ark. 59 (per curiam). Along with that right, however, goes the responsibility to comply with our rules of procedure. *Id.* Where the transcript was not timely filed, this court may only act upon and decide those cases where the movant shows good cause for the omission. *Id.*

Petitioner asserts in his motion that the trial court should have provided a ruling on his motion for an extension of time in which to lodge the record and that petitioner had no means to compel the circuit court to act promptly on his motion. He avers that he acted diligently to obtain an extension of time in which to lodge the record and that he should not be penalized for failing to obtain an extension of time.

Arkansas Rule of Appellate Procedure–Criminal 4(c) governs extensions of time to file the record in criminal cases. Under Rule 4(c), the circuit court may grant the motion extending time to lodge the record if all parties consent and if the extension is necessary for the court reporter to include stenographically reported material in the record. Ark. R. App. P.—Crim. 4 (c)(1); *see also Taylor v. State*, 2010 Ark. 324 (per curiam). In this case, the Act 1780 petition was dismissed without a hearing. Because there was no stenographically reported material that was required to be included in the record, the circuit court would have been without authority to

grant an extension of time in which to lodge the record on appeal.

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. *Burgess v. State*, 2010 Ark. 34 (per curiam). Indigent, pro se appellants routinely pursue appeals to this court and comply with our rules concerning the lodging of the record. *Young v. State*, 2009 Ark. 556 (per curiam). The fact that a petitioner is proceeding pro se does not in itself constitute good cause for the failure to conform to the prevailing procedural rules. *Ester v. State*, 2009 Ark. 442 (per curiam).

Petitioner has the burden to make a showing of good cause for his failure to conform to the prevailing procedural rules. *Id.* The record and petitioner's motion do not demonstrate that petitioner would have been entitled to an extension of time, even if the court had provided a more prompt ruling on his motion. Although petitioner states that he inquired diligently on the status of his appeal, he does not provide any reason—aside from the circuit clerk's failure to act—why the record was not tendered within the ninety-day time limit. This court has previously declined to grant a motion for rule on clerk where the petitioner alleged that the circuit clerk failed to send that petitioner either an order granting an extension of time or the appeal record before the time to lodge the record had expired. *Marshall v. State*, 2009 Ark. 420 (per curiam). The facts that petitioner alleges in this case demonstrate no better basis for his failure to comply with the time limitations of our rules. Petitioner has not shown good cause for his failure to tender the record within the ninety-day period required by Rule 4(b).

Motion denied.