

SUPREME COURT OF ARKANSAS

No. CR12-344

SIMON ERIC REED

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered May 17, 2012MOTION FOR RULE ON CLERK
TREATED AS MOTION FOR BELATED
APPEALREMANDED FOR FINDINGS ON
ATTORNEY ERROR.**PER CURIAM**

Following a jury trial, appellant was convicted of one count of assault in the third degree and one count of assault in the first degree, for which he was sentenced to thirty days' imprisonment and one year of imprisonment, respectively, in the county jail. Appellant was represented by attorney Brett Blakney at trial. The judgment and commitment order was entered on December 9, 2011, and on January 13, 2011, appellant filed a pro se "Intent to Appeal" with the circuit clerk. However, no notice of appeal was ever filed.

On April 25, 2012, appellant, by and through his attorney, Brett Blakney, filed a motion for rule on clerk. In the motion, Blakney states that he was never informed of the pro se filing by appellant and asserts that "as the Notice of Appeal was filed untimely, this Motion should be granted." Because there was no notice of appeal filed in this case, however, we treat appellant's motion as one for belated appeal.

This court clarified its 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 that there

are only two possible reasons for an appeal not being timely perfected: either the party or attorney filing the appeal is at fault, or, there is “good reason.” 356 Ark. at 116, 146 S.W.3d at 891. We explained:

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.

Id., 146 S.W.3d at 891 (footnote omitted).

When a criminal defendant requests a belated appeal, good reason is established where the defendant is not at fault, and his or her attorney has failed to file a timely notice of appeal following a request to do so received within the requisite time to file a notice of appeal. *See Williams v. State*, 366 Ark. 583, 237 S.W.3d 93 (2006). In the present case, no reason for the failure to file a notice of appeal is cited in the motion, fault is not admitted, and we cannot tell from the record whether there was attorney error.

Rule 16 of the Arkansas Rules of Appellate Procedure—Criminal states that trial counsel, whether retained or court-appointed, shall continue to represent a convicted defendant throughout any appeal unless permitted by either the trial court or the appellate court to withdraw “in the interest of justice or for other sufficient cause.” The record in this case reveals no motion by Blakney to withdraw as appellant’s counsel; therefore, it was Blakney’s responsibility to ascertain whether his client wished to appeal his conviction. The

record is silent, however, as to whether appellant informed Blakney that he wished to appeal. We therefore remand the question of attorney error to the circuit court. *See Kelley v. State*, 2010 Ark. 229 (per curiam).

Remanded for findings on attorney error.