

**SUPREME COURT OF ARKANSAS**

No. CR12-465

WILLIAM S. FISHER

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered June 21, 2012

MOTION FOR BELATED APPEAL

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GRANTED.**PER CURIAM**

Presently before the court is a Motion for Belated Appeal filed on behalf of Appellant William S. Fisher, who entered a conditional plea of nolo contendere in Garland County Circuit Court on February 6, 2012, specifically reserving the right to appeal the denial of his motion to suppress. A sentencing order was filed on February 17, 2012, and appellant filed a notice of appeal from that order on March 28, 2012.

Rule 2(a) of the Arkansas Rules of Appellate Procedure—Criminal provides that a notice of appeal must be filed within thirty days from the date of entry of a judgment. Clearly, appellant in this instance failed to file his notice of appeal within thirty days from the February 17 sentencing order. Relief for failure to perfect an appeal due to the untimely filing of a notice of appeal is provided by Ark. R. App. P.—Crim. 2(e). In *McDonald v. State*, we clarified our interpretation of that rule and held that 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. 356 Ark. 106, 146 S.W.3d 883 (2004). The party or attorney filing the appeal is therefore faced with two options: 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, or 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. 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. *Johnson v. State*, 2012 Ark. 47.

Two affidavits are attached to the motion, one of appellant's counsel, Robert Price, and one of his legal assistant, Shari Rogers, establishing the following facts. Shortly following the entry of the plea, Rogers, as directed by Price, contacted the Garland County Circuit Clerk's Office by telephone to inquire about the filing of the sentencing order. The clerk's office employee who answered the phone did not check the court's conventional case file to determine if and when a sentencing order had been filed. Instead, the employee referred Rogers to the court's website, where all filed court documents would be posted for the public. Throughout February and March, Rogers periodically checked the court's website, and on March 22, 2012, the sentencing order first appeared with a filing stamp indicating it had been filed on February 17, 2012. Also attached to the motion is a letter dated March 22, 2012, from Jeannie Pike, the Garland County Circuit Clerk, in which she states that although the sentencing order was received in the clerk's office on February 17, 2012, it was "late getting scanned for public view" and was not scanned into the system until March 22, 2012.

Under these circumstances we hold that good reason for failure to timely perfect the appeal has been shown and the motion should be granted. Appellant's attorney made reasonable inquiry to the clerk's office regarding the filing of the sentencing order and was directed to the court's website for up-to-date information. However, due to delayed scanning of the order by the clerk's office, the order was not reflected on the website until thirty-four days after it was filed.

Motion for belated appeal granted.