

SUPREME COURT OF ARKANSAS

No. CR 12-485

BRANDON ATCHLEY

APPELLANT

VS.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered AUGUST 14, 2012

MOTION FOR RULE ON CLERK

GRANTED.**PER CURIAM**

Appellant Brandon Atchley, by and through his counsel Mike Dabney, brings the instant motion for rule on clerk. Judgment was entered against Appellant on December 7, 2011, and a timely notice of appeal was filed on December 30, 2011. On March 5, 2012, Appellant filed a motion for extension of time to file the record. Although Appellant obtained the requisite order for an extension of time, he failed to timely file that order, and the order granting the extension was not filed until May 24, 2012. Thus, when Appellant attempted to lodge the record with this court, it was refused as being untimely.

We clarified our treatment of motions for rule on clerk and motions for belated appeal in *McDonald v. State*, 356 Ark. 106, 146 S.W.3d 883 (2004). There we said the following:

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. 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 McDonald*, 356 Ark. 106, 146 S.W.3d 883. 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. Dabney's part in failing to timely file the record. Pursuant to *McDonald*, we grant Appellant's motion for rule on clerk and forward a copy of this opinion to the Committee on Professional Conduct.