

SUPREME COURT OF ARKANSAS

No. CR 12-812

DEADRUN LAMON TOLEFREE
A/K/A DEANDRUN LAMON
TOLEFREE
PETITIONER

V.

STATE OF ARKANSAS
RESPONDENT

Opinion Delivered November 1, 2012

PRO SE PETITION FOR WRIT OF
CERTIORARI [CLARK COUNTY
CIRCUIT COURT, CR 10-130, HON.
ROBERT MCCALLUM, JUDGE]

PETITION TREATED AS MOTION
FOR BELATED APPEAL OF ORDER
AND DENIED.

PER CURIAM

In 2010, petitioner Deadrún Lamón Tolefree, who is also known as Deandrún Lamón Tolefree, entered a plea of guilty to aggravated assault and possession of a firearm by a certain person. He was sentenced as a habitual offender to an aggregate term of 360 months' imprisonment.

Petitioner then timely filed in the trial court a verified pro se petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2012). The trial court entered an order denying and dismissing the petition on June 17, 2011. No appeal was taken, and petitioner now seeks a writ of certiorari. As the petition is a request for leave to proceed with a belated appeal, the petition will be treated as a motion for belated appeal pursuant to Arkansas Rule of Appellate Procedure—Criminal 2(e) (2012).

Rule 2(e) permits a belated appeal “when a good reason for the omission is shown.” If a notice of appeal is not filed in a timely manner, the burden falls squarely upon the petitioner

to establish good cause for the failure to comply with proper procedure. *Nelson v. State*, 2010 Ark. 218 (per curiam); see also *Garner v. State*, 293 Ark. 309, 737 S.W.2d 637 (1987) (per curiam). We have consistently held that this burden applies even when the petitioner proceeds pro se, as all litigants must bear the responsibility for conforming to the rules of procedure or demonstrating good cause for not so conforming. *Nelson*, 2010 Ark. 218; *Daniels v. State*, 2009 Ark. 607 (per curiam); *Peterson v. State*, 289 Ark. 452, 711 S.W.2d 830 (1986) (per curiam); *Walker v. State*, 283 Ark. 339, 676 S.W.2d 460 (1984) (per curiam); *Thompson v. State*, 280 Ark. 163, 655 S.W.2d 424 (1983) (per curiam).

Petitioner contends that the circuit court clerk failed to send him a copy of the order denying petitioner's Rule 37.1 petition, which the circuit court was required to do under Arkansas Rule of Criminal Procedure 37.3(d). We have held that the language of Rule 37.3(d) is mandatory. *Tarry v. State*, 353 Ark. 158, 114 S.W.3d 161 (2003) (per curiam). The rule is intended to "provide for prompt, consistent notice to petitioners." See *Scott v. State*, 281 Ark. 436, 438, 664 S.W.2d 475, 476 (1984) (per curiam).

Here, the order in the record entered on June 17, 2011, bears the clerk's notation on the face of the order stating that a copy of it was mailed to petitioner. Petitioner does not contend that he received the copy of the order too late for him to file a timely notice of appeal. Rather, he alleges that he was unaware that the order had been entered until August 2012. The clerk's notation that the order was mailed to him, however, is sufficient to establish that a copy of the order was, in fact, mailed to him. *Newton v. State*, CR 01-837 (Ark. Oct. 11, 2001) (unpublished per curiam). Under these circumstances, petitioner has not established good cause for his failure to file a timely notice of appeal.

Petition treated as motion for belated appeal of order and denied.

Deadrin Lamon Tolefree, pro se appellant.

No response.