

ARKANSAS SUPREME COURT

No. CR 12-855

ALONZO DAVIS

PETITIONER

V.

STATE OF ARKANSAS

RESPONDENT

Opinion Delivered January 17, 2013

PRO SE MOTION FOR BELATED
APPEAL [JEFFERSON COUNTY
CIRCUIT COURT, CR 11-174, HON.
JODI RAINES DENNIS, JUDGE]MOTION DENIED.**PER CURIAM**

On May 11, 2012, petitioner Alonzo Davis was found guilty of eleven counts of distributing, possessing, or viewing matter depicting sexually explicit conduct involving a child. An aggregate sentence of 108 months' imprisonment was imposed. The sentencing order was entered-of-record on May 24, 2012.

No appeal was taken from the sentencing order, and petitioner now seeks leave to proceed with a belated appeal pursuant to Rule 2(e) of the Rules of Appellate Procedure—Criminal (2012). In the pro se motion, petitioner contends that his appointed attorney, Christopher W. Hays, did not provide him at trial with the effective assistance of counsel to which he was entitled. He also asserts that he was innocent of the offenses and that the evidence was insufficient to sustain the judgment.

It is the practice of this court when a pro se motion for belated appeal is filed, and the record tendered with the motion does not contain an order relieving trial counsel, to request

an affidavit from the trial attorney in response to the allegations in the motion. There was no order relieving Mr. Hays in the partial record submitted by petitioner in this case. This affidavit is required because Rule 16(a) of the Rules of Appellate Procedure—Criminal (2012) provides in pertinent part that trial counsel, whether retained or court appointed, shall continue to represent a convicted defendant throughout any appeal, unless permitted by the trial court or the appellate court to withdraw in the interest of justice or for other sufficient cause.

In the affidavit filed by petitioner's trial counsel, Mr. Hays states that petitioner was offered an opportunity to enter a negotiated plea of guilty under which the sentence imposed would total 480 months' imprisonment. Petitioner declined the offer on the record before trial. After petitioner was convicted on all eleven counts and received a sentence of 108 months, counsel avers that he discussed the possibility of an appeal with petitioner, including explaining to petitioner that a successful appeal could mean that petitioner would be retried for the same charges and that a new trial could result in a much more lengthy sentence than the 108 months imposed. Mr. Hays states that he visited petitioner on May 14, 2012, and again explained the procedure for perfecting an appeal and the possible outcomes of taking an appeal. At that time, petitioner signed a sworn statement asserting that he had decided not to appeal and that his decision was made knowingly and intelligently. A copy of the statement was appended to Mr. Hays's affidavit. In his motion, petitioner mentions signing the affidavit but contends only concerning the affidavit that he would not have been convicted had Mr. Hays afforded him effective assistance of counsel.

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 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. The party or attorney filing the motion for belated 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. *See Sellers v. State*, 2012 Ark. 338, at 1 (per curiam).

Here, in light of petitioner’s having signed a verified affidavit after trial clearly stating that he had elected to forego an appeal, we find that petitioner has not demonstrated good cause to permit him to proceed with a belated appeal. Petitioner’s allegation concerning his attorney’s effectiveness at trial and his claim of actual innocence are not matters to be addressed in a proceeding for a belated appeal. Neither counsel’s effectiveness at trial nor the sufficiency of the evidence is germane to whether counsel provided effective assistance with respect to any obligation to perfect an appeal of the judgment.

Motion denied.

Alonzo Davis, pro se petitioner.

No response.