

SUPREME COURT OF ARKANSAS

No. CR13-360

JASON CARL HAYES

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered May 16, 2013

APPEAL FROM THE BOONE
COUNTY CIRCUIT COURT
[NO. CR-2011-310-4]HONORABLE GORDON WEBB,
JUDGEMOTION FOR RULE ON CLERK
GRANTED.**PER CURIAM**

Appellant Jason Carl Hayes, by and through his attorney, has filed a motion for a rule on clerk. Judgment was entered against Hayes on January 14, 2013, and he timely filed a notice of appeal on January 16, 2013, making the record due in this court on April 17, 2013. Counsel tendered the record on April 23, 2013. The attorney, Rebekah Kennedy, admits responsibility for the late tendering of the record.

This court 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:

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.

356 Ark. 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 id.*

In accordance with McDonald, *supra*, Ms. Kennedy has candidly admitted fault. The motion is, therefore, granted. A copy of this opinion will be forwarded to the Committee on Professional Conduct.

Rebekah J. Kennedy, for appellant.

No response.