

Cite as 2015 Ark. 319

SUPREME COURT OF ARKANSAS

No. CR-15-22

WAYNE LADELL TAYLOR, JR.
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered September 17, 2015

MOTION FOR BELATED APPEAL

GRANTED.**PER CURIAM**

Appellant Wayne Ladell Taylor, Jr., by and through his attorney, John Wesley Hall, brings the instant motion for belated appeal. Taylor seeks to file a belated appeal from the September 8, 2014 order denying his request for postconviction relief filed pursuant to Arkansas Rule of Criminal Procedure 37.1 (2014). In his motion, Taylor asserts that neither he nor his counsel received a copy of the order as required by Rule 37.3(d).

Arkansas Rule of Appellate Procedure–Criminal 2(a) (2014) requires that a notice of appeal must be filed within thirty days of the date that an order denying a petition for postconviction relief was entered. A petitioner has the right to appeal a ruling on a petition for postconviction relief. *Bean v. State*, 2014 Ark. 440 (per curiam). If a petitioner fails to file a timely notice of appeal, however, a belated appeal will not be allowed absent a showing by the petitioner of good cause for the failure to comply with proper procedure. *Id.*

Arkansas Rule of Criminal Procedure 37.3(d) requires the circuit court to promptly mail a copy of an order disposing of a Rule 37.1 petition to the petitioner. *Lee v. State*, 2015

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Ark. 26 (per curiam). The language in the rule is mandatory, and this court has recognized good cause to excuse the petitioner's failure to timely file a notice of appeal in cases where the circuit court has failed to abide by Rule 37.3(d). *Nelson v. State*, 2013 Ark. 316 (per curiam). Where the record is silent, and the respondent is unable to provide an affidavit from the clerk of the circuit court or some other proof that the order was mailed, this court must assume that the petitioner was not properly notified. *Id.*

The requirement that a petitioner be timely notified of the disposition of a Rule 37.1 petition is necessary so that the petitioner may file a timely notice of appeal. Taylor contends that he did not receive notice of the order denying his petition and learned of it only because his attorney discovered it on CourtConnect on or about October 10, 2014. By that date, the time for filing the notice of appeal had expired. The State filed no response to Taylor's motion for belated appeal, and we must assume that Taylor did not receive timely notice of the denial of his petition.

Because Taylor has stated good cause for the procedural default, we grant the request to permit the appeal to go forward.

Motion granted.