

Cite as 2009 Ark. 368 (unpublished)

ARKANSAS SUPREME COURT

No. CR 09-134

Opinion Delivered June 18, 2009

CHARLES DERRICK KELLER
Petitioner

v.

STATE OF ARKANSAS
Respondent

PRO SE MOTION FOR
RECONSIDERATION OF DENIAL
OF RULE ON CLERK [CIRCUIT
COURT OF SEBASTIAN COUNTY,
FORT SMITH DISTRICT, CR 99-825,
HON. J. MICHAEL FITZHUGH,
JUDGE]

MOTION DENIED.

PER CURIAM

Petitioner Charles Derrick Keller entered pleas of nolo contendere to charges of possession of hydrocodone with intent to deliver and possession of marijuana and received suspended imposition of sentences as to both charges and a \$500 fine. Petitioner filed in the trial court a pro se motion to vacate in which he sought to withdraw his plea and vacate the judgment. The trial court entered an order that denied the motion as untimely and petitioner timely filed his notice of appeal, but failed to tender the record within the time limit set in Arkansas Rule of Appellate Procedure–Civil 5(a), as applied through Arkansas Rule of Appellate Procedure–Criminal 4(a). Petitioner then filed in this court a motion for rule on clerk that was denied. *Keller v. State*, CR 09-134 (Ark. Apr. 16, 2009) (unpublished per



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curiam). He now has filed a motion in which he requests that we reconsider our decision to deny the motion for rule on clerk.

On December 4, 2008, the trial court entered an order granting an extension of time to file the appeal in this court until January 12, 2009.¹ Petitioner filed a second motion for extension of time and an order was entered on March 2, 2009, that purported to grant a further extension of time until February 28, 2009. In his motion for reconsideration, petitioner asserts that he acted in reliance on this judicial action. Because the extension was not granted until after petitioner tendered the record, however, petitioner could not possibly have relied upon the trial court's ineffective extension of time. Petitioner tendered the record on January 21, 2009, and our clerk correctly declined to lodge the record.

As we noted in our previous opinion, petitioner acknowledged that the circuit clerk provided the record to him on January 6, 2009. Petitioner has not shown good cause for the delay in filing the record until after expiration of the January 12, 2009, deadline. We therefore deny the motion for reconsideration.

Motion denied.

¹The partial record tendered with this motion for rule on clerk includes a transcription of the plea hearing and sentencing on the charges contested in the motion to vacate.