

SUPREME COURT OF ARKANSAS

No. CR 10-1109

KEVIN R. WRIGHT
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered December 2, 2010

PRO SE MOTION FOR BELATED
APPEAL OF ORDER [ARKANSAS
COUNTY CIRCUIT COURT, SOUTHERN
DISTRICT, CR 2009-92, HON. DAVID G.
HENRY, JUDGE]

MOTION DENIED.

PER CURIAM

On April 14, 2010, judgment was entered in the Arkansas County Circuit Court, Southern District, reflecting that petitioner Kevin R. Wright had entered a plea of guilty to residential burglary, theft of property, and two counts of robbery. An aggregate sentence of 300 months' imprisonment was imposed.

Petitioner subsequently filed in the trial court a timely verified pro se petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2010). The court entered an order denying the petition on July 7, 2010. Petitioner did not file a notice of appeal from the order and now seeks leave to proceed with a belated appeal.

Arkansas Rule of Appellate Procedure—Criminal 2(a)(4) (2010) requires that a notice of appeal be filed within thirty days of the date an order denying postconviction relief was entered. A notation on the order entered July 7, 2010, indicates that a copy of the order was mailed to petitioner, and petitioner does not claim that he did not receive it in time for him

to file a timely notice of appeal.

Arkansas Rule of Appellate Procedure–Criminal 2(e) (2010) permits a belated appeal when good cause for the failure to file a notice of appeal is shown. If a notice of appeal is not timely filed, the burden is on the petitioner to establish good cause for the failure to comply with proper procedure. *Atkins v. State*, 2010 Ark. 392 (per curiam); *Cummings v. State*, 2010 Ark. 123 (per curiam); *Hale v. State*, 2010 Ark. 17 (per curiam); see *Garner v. State*, 293 Ark. 309, 737 S.W.2d 637 (1987) (per curiam). We have consistently held that this burden applies even where 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. *Cummings*, 2010 Ark. 123; *Hale*, 2010 Ark. 17 (citing *Daniels v. State*, 2009 Ark. 607 (per curiam)); see also *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 argues that he should be allowed to proceed with an appeal because his failure to file a notice of appeal from the Rule 37.1 order stemmed from his lack of legal knowledge. He contends that he relied on fellow prison inmates for advice and help in perfecting the appeal and that the inmate who was assisting him was transferred to another facility leaving him without the help he needed.

We do not find that petitioner has established good cause for his failure to conform to procedural rules. This court has specifically held that reliance by one incarcerated person on

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another for legal advice or assistance is not an excuse for failing to conform to procedural rules. *Bragg v. State*, 297 Ark. 348, 760 S.W.2d 878 (1988); *see also Garner*, 293 Ark. 309 (holding that if the mere declaration of ignorance of the rules of procedure were enough to excuse lack of compliance, it would be just as well to have no rules since an appellant could simply bypass the rules by claiming a lack of knowledge).

It is not the responsibility of anyone other than the appellant to perfect an appeal. *See Ester v. State*, 2009 Ark. 442 (per curiam) (citing *Sullivan v. State*, 301 Ark. 352, 784 S.W.2d 155 (1990)). Here, petitioner failed to act to preserve his right to appeal the postconviction order, and he has not met his burden of demonstrating that there was good cause for the failure to act.

Motion denied.