

SUPREME COURT OF ARKANSAS

No. CR09-1305

CECIL A. BAYLESS, II

APPELLANT,

VS.

STATE OF ARKANSAS,

APPELLEE,

Opinion Delivered 1-7-10

MOTION FOR RULE ON CLERK

MOTION GRANTED.

PER CURIAM

Appellant Cecil A. Bayless, II, by and through his attorney, Robert M. “Robby” Golden, has filed a motion for rule on clerk. Appellant is appealing an order of June 17, 2009, revoking his probation and sentencing him to four years’ imprisonment in the Arkansas Department of Correction. A notice of appeal was filed on July 16, 2009, making the due date for filing the record October 14, 2009. On October 2, 2009, an order was entered extending the time to file the record to November 13, 2009. Appellant’s counsel tendered the record on December 2, 2009, which date counsel concedes was untimely. Now, in seeking this court’s leave to file the record, Mr. Golden accepts full responsibility for miscalculating the deadline for filing the record.

This court has clarified the treatment of motions for rule on clerk 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.” *Id.* at 116, 146 S.W.3d at 891. We explained:

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 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.

Id. 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 has erred and is responsible for the failure to perfect the appeal. *See McDonald*, 356 Ark. 106, 146 S.W.3d 883.

In accordance with *McDonald*, Mr. Golden has candidly admitted fault. The motion is, therefore, granted, and a copy of this opinion will be forwarded to the Committee on Professional Conduct.