

SUPREME COURT OF ARKANSAS

No. CR 11-219

JOSEPH WAYNE TROTTER,
APPELLANT,

VS.

STATE OF ARKANSAS,
APPELLEE,

Opinion Delivered March 17, 2011

MOTION FOR BELATED APPEAL,

GRANTED.

PER CURIAM

On October 13, 2010, Appellant Joseph Wayne Trotter was convicted of rape and was sentenced to sixty years' imprisonment in the Arkansas Department of Correction. On February 25, 2011, Appellant's counsel, Jim Phillips, filed a motion for belated appeal explaining that he "inadvertently failed to file a notice of appeal in a timely manner."

Belated appeals in criminal cases are governed by Rule 2(e) of the Arkansas Rules of Appellate Procedure—Criminal, which provides in pertinent part:

The Supreme Court may act upon and decide a case in which the notice of appeal was not given or the transcript of the trial record was not filed in the time prescribed, when a good reason for the omission is shown by affidavit. However, no motion for belated appeal shall be entertained by the Supreme Court unless application has been made to the Supreme Court within eighteen (18) months of the date of entry of judgment or entry of the order denying postconviction relief from which the appeal is taken.

Ark. R. App. P.—Crim. 2(e) (2010).

Further, in *McDonald v. State*, 356 Ark. 106, 146 S.W.3d 883 (2004), we explained that

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.

Id. at 116, 146 S.W.3d at 891 (footnote omitted). While we no longer require an affidavit admitting fault, an attorney should candidly admit fault in the motion where his error is the cause of the failure to perfect the appeal. *Avery v. State*, 361 Ark. 352, 353–54, 206 S.W.3d 828, 829 (2005).

Mr. Phillips has complied with this court's rules by timely filing the motion for belated appeal within eighteen (18) months from the date of the entry of judgment. Mr. Phillips also admits fault for failing to timely file a notice of appeal and takes full responsibility for his error. For these reasons, the motion is granted. A copy of this opinion will be forwarded to the Committee on Professional Conduct.

Motion for belated appeal granted.