

Cite as 2010 Ark. 34

SUPREME COURT OF ARKANSAS

No. CR-09-1209

Opinion Delivered January 21, 2010

EDWARD RAY BURGESS
PETITIONER

PRO SE MOTIONS FOR BELATED
APPEAL OF ORDER AND FOR
APPOINTMENT OF COUNSEL

V.

MILLER COUNTY CIRCUIT COURT
[CR 2006-109]

STATE OF ARKANSAS
RESPONDENT

HON. JAMES HUDSON, JUDGE

MOTION FOR BELATED APPEAL
TREATED AS MOTION FOR RULE
ON CLERK AND DENIED; MOTION
FOR APPOINTMENT OF COUNSEL
MOOT.

PER CURIAM

In 2007, judgment was entered reflecting that petitioner Edward Ray Burgess had entered a plea of guilty to murder in the second degree for which he was sentenced to 360 months' imprisonment. Subsequently, petitioner timely filed in the trial court a pro se petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1. The petition was denied on September 4, 2008. Petitioner timely filed a notice of appeal from the order on September 17, 2008, but he did not tender the record to this court within ninety days of the date of the notice of appeal as required by Arkansas Rule of Appellate

Procedure_Criminal 4(b) (2008).¹ He now seeks leave to lodge the record belatedly and requests appointment of counsel to represent him on appeal. As the notice of appeal was timely, we treat the motion as a motion for rule on clerk pursuant to Arkansas Supreme Court Rule 2-2(b) (2009) to perfect the appeal rather than a motion for belated appeal. *Ester v. State*, 2009 Ark. 442 (per curiam) (citing *Mitchem v. State*, 374 Ark. 157, 386 S.W.3d 679 (2008) (per curiam)); *Marshall v. State*, 2009 Ark. 420 (per curiam).

A petitioner has the right to appeal a ruling on a petition for postconviction relief. *Young v. State*, 2009 Ark. 556 (per curiam). With that right goes the responsibility of complying with our rules of procedure. Where the record was not filed within the time prescribed under Rule 4(b), this court may only act on and decide those cases where the petitioner shows good cause for the omission. *Id.*; Ark. R. App. P.–Crim. 2(e) (2009).

Petitioner contends that he was denied due process of law in the Rule 37.1 proceeding, but the Rule 37.1 proceeding and whether the petition had merit are not at issue. The sole question is whether petitioner has established good cause for the late tender of the record. In that regard, his only explanation for failure to perfect the appeal is the statement that he “did not know to tender the record to Supreme Court.” The statement does not constitute good cause inasmuch as mere ignorance of appellate procedure in itself is not good cause to permit an appeal to go forward when the petitioner has failed to comply with procedural rules. See *Raines v. State*, 336 Ark. 49, 983 S.W.2d 424 (1999) (per curiam); see also *Strawbridge v. State*, 327 Ark. 679, 940 S.W.2d 477 (1997) (per curiam);

¹Petitioner tendered the record 257 days after the notice of appeal was filed.

Thompson v. State, 280 Ark. 163, 655 S.W.2d 424 (1983) (per curiam).

It is well settled that all litigants, including those who proceed pro se, must bear responsibility for conforming to the rules of procedure or demonstrating a good cause for not doing so. *Marshall v. State*, 2009 Ark. 420 (per curiam); *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; see *Tarry v. State*, 353 Ark. 158, 114 S.W.3d 161 (2003) (per curiam). Petitioner here has not established good cause for failing to tender the record in a timely manner. Accordingly, the motion to proceed with the appeal is denied. As the motion is denied, the motion for appointment of counsel to represent petitioner on appeal is moot.

Motion for belated appeal treated as motion for rule on clerk and denied; motion for appointment of counsel moot.

No briefs filed.