

SUPREME COURT OF ARKANSAS

No. CR08-1344

SHELTON WORMLEY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered September 10, 2009

MOTION FOR BELATED APPEAL

GRANTED.

PER CURIAM

Shelton Wormley, by and through his attorney, Jason P. Kearney, moves this court for permission to file a belated appeal. His attorney states in the motion that prior counsel Donald Warren, Sr., erred in filing a notice of appeal from the order denying Wormley’s motion to suppress, rather than from his May 29, 2008 judgment and commitment order.

This court clarified its treatment of motions for rule on clerk and motions for belated appeals in *McDonald v. State*, 356 Ark. 106, 146 S.W.3d 883 (2004). There we stated 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 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



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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., 146 S.W.3d at 891 (footnote omitted). When it is plain from the motions, affidavits, and record that relief is proper based on error or good reason, the relief will be granted. *Id.* Error of counsel Donald Warren, Sr., in appealing from the wrong order is plain; therefore, the belated appeal will be allowed. See *Rodrigo v. State*, 370 Ark. 473, 261 S.W.3d 465 (2007). A copy of the opinion will be forwarded to the Committee on Professional Conduct. *McDonald, supra.*

Motion granted.