

SUPREME COURT OF ARKANSAS

No. CR10-31

EDDRICK CHILDS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered FEBRUARY 4, 2010

MOTION FOR RULE ON CLERK

GRANTED.

PER CURIAM

Appellant, Eddrick Childs, by and through his attorney, Clint Miller, seeks a motion for rule on the clerk. In the motion, Mr. Miller states that he admits responsibility for tendering the record on appeal one day past the deadline. The State has not filed a response.

Appellant was convicted by a Pulaski County jury of two counts of rape and two counts of kidnapping. Appellant was sentenced to thirty years' imprisonment for each count of rape and five years' imprisonment for each count of kidnapping. The judgment and commitment order was entered of record on September 16, 2009, and reflected that the sentences for rape were to be consecutive and that the sentences for kidnapping were to be concurrent with each other and with the sentences for rape. A timely notice of appeal was filed on October 12, 2009. The time for filing the record on appeal was ninety days after October 12, 2009, which was Sunday, January 10, 2010. Because the due date fell on a Sunday, the deadline was extended to Monday January 11, 2010, pursuant to Rule 1.4 of the



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Arkansas Rules of Criminal Procedure. However, Mr. Miller did not tender the record to this court until the next day, January 12, 2010.

This court clarified its 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

[w]here 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., 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 id.* at 106, 146 S.W.3d 883.

Because Mr. Miller candidly admits that he failed to timely file the record, we grant the motion for rule on clerk. A copy of this opinion will be forwarded to the Arkansas Supreme Court Committee on Professional Conduct.

Motion for rule on clerk granted.

BROWN, J., not participating.