

SUPREME COURT OF ARKANSAS

No. CR 09-996

ANDREW TREMAINE BREWER
PETITIONER

V.

STATE OF ARKANSAS
RESPONDENT

Opinion Delivered February 4, 2010

PRO SE MOTION FOR BELATED
APPEAL [CIRCUIT COURT OF
COLUMBIA COUNTY, CR 2006-16,
HON. LARRY CHANDLER, JUDGE]

MOTION TREATED AS MOTION
FOR RULE ON CLERK AND
DENIED.

PER CURIAM

In 2006, a jury found petitioner Andrew Tremaine Brewer guilty of possession of a controlled substance (Darvocet) and residential burglary and sentenced him as a habitual offender to an aggregate term of 840 months' imprisonment. The Arkansas Court of Appeals affirmed the judgment. *Brewer v. State*, CACR06-1403 (Ark. App. Sept. 19, 2007) (unpublished).¹ Petitioner filed in the trial court a petition for postconviction relief under Arkansas Rule of Criminal Procedure 37.1 that was denied on December 31, 2008.²

Appellant timely filed his notice of appeal of the December 31, 2008 order on January

¹Petitioner filed a motion to proceed pro se and a pro se petition for review under our Rule 1-2(b) that was denied. *Brewer v. State*, 371 Ark. 532, 268 S.W.3d 332 (2007).

²Petitioner first filed a petition on December 6, 2006. That petition was, however, filed before the mandate issued on March 19, 2008. *See Brewer v. State*, CR 08-355 (Ark. Apr. 24, 2008) (per curiam). The petition at issue contained in the record now before us is file marked May 2, 2007. The petition only challenged the conviction on the residential burglary charge. The notarization is dated April 24, 2008, and the trial court found that the petition was filed May 2, 2008, however. As the motion is denied in any event, we need not address whether the petition was timely.



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15, 2009. *See* Ark. R. App. P.–Crim. 2(a) (2008). He now brings this motion for belated appeal. Where the notice of appeal was timely, we treat the motion to proceed with the appeal as a motion for rule on clerk to lodge the record rather than a motion for belated appeal. *Ester v. State*, 2009 Ark. 442 (per curiam) (citing *Mitchem v. State*, 374 Ark. 157, 286 S.W.3d 679 (2008) (per curiam)).

Rule 4(b) of the Arkansas Rules of Appellate Procedure—Criminal (2009) requires that the record must be tendered to this court within ninety days of the date of the notice of appeal, unless the circuit court granted an extension of time. Petitioner did not lodge the transcript within the time required, and the record does not indicate that any extension was granted.

A petitioner has the right to appeal a ruling on a petition for postconviction relief. *Scott v. State*, 281 Ark. 436, 664 S.W.2d 475 (1984) (per curiam). Along with that right, however, goes the responsibility to comply with our rules of procedure. *See id.* Where the transcript was not filed within the time prescribed under Rule 4(b), this court may only act upon and decide those cases where the movant shows good cause for the omission. Ark. R. App. P.–Crim. 2(e) (2009).

Petitioner has not stated good cause for the delay in filing the record. He asserts that the circuit clerk had a duty to file the record. He contends that he is entitled to appeal the ruling, that he is proceeding pro se and would raise constitutional issues, and further attempts to argue the merits of the appeal.



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It is not the responsibility of the circuit clerk, circuit court, or anyone other than the appellant, to perfect an appeal. *Branning v. State*, 363 Ark. 369, 214 S.W.3d 237 (2005) (per curiam). 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); see also *Tarry v. State*, 353 Ark. 158, 114 S.W.3d 161 (2003) (per curiam). Because petitioner has failed to state good cause for failure to conform with our rules of procedure, the motion for rule on clerk is denied.

Motion treated as motion for rule on clerk and denied.

BROWN, J., not participating.