

Cite as 2010 Ark. 68

**SUPREME COURT OF ARKANSAS**

No. CR10-68

STEVEN W. EVANS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** February 12, 2010

MOTION FOR RULE ON CLERK

MOTION GRANTED.

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**PER CURIAM**

Appellant Steven W. Evans, by and through his attorney, filed a motion to file a belated appeal. A judgment and commitment order was filed against Evans by the White County Circuit Court on July 8, 2009. Evans's notice of appeal was timely filed on July 9, 2009, and an amended notice of appeal was filed on July 22, 2009. However, the record was not timely lodged with our court as required by Rule 4(b) of the Arkansas Rules of Appellate Procedure—Criminal (2009). His attorney, Richard Grasby, states in the motion that he admits responsibility for failing to tender the record on time.

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) 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, 386 S.W.3d 679 (2008) (per curiam)); *Marshall v. State*, 2009 Ark. 420 (per curiam). 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 said that there are only



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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.” 356 Ark. 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 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.*

In accordance with *McDonald, supra*, Mr. Grasby has candidly admitted fault. The motion is therefore granted. A copy of this opinion will be forwarded to the Committee on Professional Conduct.

Motion granted.

*Richard Grasby*, for appellant.

*Dustin McDaniel*, Att’y Gen., by: *Pamela A. Rumpz*, Ass’t Att’y Gen., for appellee.