

**SUPREME COURT OF ARKANSAS**

No. CR 09-917

WILLIAM THOMAS HALE  
PETITIONER

V.

STATE OF ARKANSAS  
RESPONDENT

**Opinion Delivered**      **January 14, 2010**

PRO SE MOTION FOR BELATED  
APPEAL [SALINE COUNTY CIRCUIT  
COURT, CR2006-877, HON.  
GRISHAM A. PHILLIPS, JUDGE]

MOTION GRANTED.

**PER CURIAM**

In 2008, a jury found petitioner William Thomas Hale guilty of internet stalking under Arkansas Code Annotated § 5-27-306 (2008) and sentenced him to a term of 276 months' imprisonment in the Arkansas Department of Correction. The Arkansas Court of Appeals affirmed the conviction on January 7, 2009. *Hale v. State*, No. CACR 08-755 (Ark. App. Jan. 7, 2009) (unpublished). Petitioner then timely filed a verified pro se petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1. The trial court entered an order denying the petition on April 3, 2009.

Petitioner filed a notice of appeal from the order on May 8, 2009, outside the mandatory thirty-day deadline.<sup>1</sup> Because the notice of appeal was untimely filed in the trial

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<sup>1</sup>Arkansas Rule of Appellate Procedure—Criminal 2(a)(4) allows a petitioner thirty days from the date of entry of an order denying Rule 37.1 relief to file a timely notice of appeal. Thirty days from April 3, 2009, was May 3, 2009. However, because May 3 fell on a Sunday, the time to file an appeal extended to the next day, Monday, May 4, 2009. Ark. R. App. P.—Crim. 17 (2009); *Bowen v. State*, 322 Ark. 483, 911 S.W.2d 555 (1995). Petitioner's notice of appeal was therefore filed four days late.



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court, our clerk correctly refused to lodge the appeal when petitioner subsequently tendered the record. Petitioner then filed the pro se motion for belated appeal now before us, in which he seeks to lodge the record and proceed with an appeal of the trial court's order.

Arkansas Rule of Appellate Procedure—Criminal 2(e) allows this court to grant a belated appeal “when a good reason for the omission is shown.” If a notice of appeal is untimely, the burden falls squarely upon the petitioner to establish good cause for the failure to comply with proper procedure. See *Garner v. State*, 293 Ark. 309, 737 S.W.2d 637 (1987) (per curiam). We have consistently held that this burden applies even where the petitioner proceeds pro se, as all litigants must bear the responsibility for conforming to the rules of procedure or demonstrating good cause for not so conforming. *Daniels v. State*, 2009 Ark. 607 (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 (1983) (per curiam).

Petitioner contends that the circuit court clerk failed to send him a copy of the order denying petitioner's Rule 37.1 petition, which the circuit court was required to do under Arkansas Rule of Criminal Procedure 37.3(d). We have previously held that the language of Rule 37.3(d) is mandatory. *Tarry v. State*, 353 Ark. 158, 114 S.W.3d 161 (2003) (per curiam). The rule is intended to “provide for prompt, consistent notice to petitioners.” See *Scott v. State*, 281 Ark. 436, 438, 664 S.W.2d 475, 476 (1984) (per curiam).

Nothing in the record suggests that petitioner was properly notified under Rule 37.3, and the Attorney General, representing the respondent, has not filed a response to petitioner's



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instant motion to refute the allegations therein, including the alleged failure to notify. Where the record is silent and the respondent is unable to provide an affidavit from the clerk or some other proof that the order was mailed, we must assume that the petitioner was not properly notified. *Porter v. State*, 287 Ark. 359, 698 S.W.2d 801 (1985) (per curiam); *Kelly v. State*, 301 Ark. 294, 783 S.W.2d 369 (1990) (per curiam). We have held on more than one occasion that failure of the circuit court to follow Rule 37.3(d) may establish good cause. *See, e.g., Chiasson v. State*, 304 Ark. 110, 798 S.W.2d 927 (1990) (per curiam) and *Porter*, 287 Ark. at 360, 698 S.W.2d at 801. On that basis, petitioner's motion for belated appeal will be granted. The clerk is directed to lodge the record on appeal and set a briefing schedule.

Motion granted.

BOWEN, J., not participating.

*William Thomas Hale*, pro se petitioner.

No response.