

**SUPREME COURT OF ARKANSAS**

No. 09-1027

EUGENE WESLEY

PETITIONER

V.

GREG HARMON, WARDEN,  
ARKANSAS DEPARTMENT OF  
CORRECTION

RESPONDENT

**Opinion Delivered**      January 14, 2010

PRO SE MOTION FOR BELATED  
APPEAL [CIRCUIT COURT OF LEE  
COUNTY, CV 2007-141, HON. L.T.  
SIMES, II, JUDGE]

MOTION DENIED.

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**PER CURIAM**

On October 30, 2007, petitioner Eugene Wesley, who is in the custody of the Arkansas Department of Correction by virtue of multiple criminal convictions, filed a pro se petition for writ of habeas corpus in the county where he was incarcerated. On March 20, 2008, the petition was denied. Petitioner filed a motion for reconsideration that was denied on April 4, 2008. No appeal was taken, and petitioner now seeks leave from this court to proceed with a belated appeal of the April 4, 2008 order.

Arkansas Rule of Appellate Procedure –Civil 4(a) requires that a notice of appeal be filed within thirty days of the date an order is entered. As grounds for the motion for belated appeal, petitioner contends that he did not get prompt notice from the circuit clerk that the



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order had been entered and thus it was the clerk's conduct that caused him to fail to comply with the rule.

A petitioner has the right to appeal a ruling on a petition for postconviction relief, which includes the denial of a petition for writ of habeas corpus. *McClain v. Norris*, 2009 Ark. 428 (per curiam); see *Scott v. State*, 281 Ark. 436, 664 S.W.2d 475 (1984) (per curiam). If the petitioner fails to file a timely notice of appeal, a belated appeal will not be allowed absent a showing by the petitioner of good cause for the failure to comply with proper procedure. *Garner v. State*, 293 Ark. 309, 737 S.W.2d 637 (1987) (per curiam).

Even if the orders were not promptly forwarded to petitioner, that fact in itself does not constitute good cause for petitioner's failure to follow procedure. In contrast to the denial of a petition for postconviction relief under Arkansas Rule of Criminal Procedure 37.1,<sup>1</sup> there is no absolute duty imposed in the statute on a judge or a clerk to notify a petitioner that a petition for writ of habeas corpus has been denied. *McClain*, 2009 Ark. 428, at 1 (per curiam); Ark. Code Ann. §§ 16-112-101 to -123 (Repl. 2006).

Our law imposes a duty on lawyers and litigants to exercise reasonable diligence to keep up with the status of cases. *Id.* (citing *Harris v. Boyd G. Montgomery Testamentary Trust*, 370 Ark. 518, 262 S.W.3d 145 (2007) (per curiam)). The pro se litigant receives no special

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<sup>1</sup>Arkansas Rule of Criminal Procedure 37.3(d) places an obligation on the circuit court to promptly mail a copy of the order to the petitioner.



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consideration in this regard. *Id.*; see also *Tarry v. State*, 346 Ark. 267, 57 S.W.3d 163 (2001) (per curiam). It is not the responsibility of the circuit clerk, or anyone other than the party desiring to appeal, to perfect the appeal. *Ester v. State*, 2009 Ark. 442 (per curiam); *Marshall v. State*, 2009 Ark. 420 (per curiam). As it was the duty of petitioner to file a timely notice of appeal, and he has not established good cause for his failure to do so, the motion to proceed with the appeal is denied.

Motion denied.

BOWEN, J., not participating.

*Eugene Wesley*, pro se petitioner.

No response.