

Cite as 2010 Ark. 321

**SUPREME COURT OF ARKANSAS**

No. CR10-579

TERRY PENNISTER

V.

STATE OF ARKANSAS

**Opinion Delivered** August 6, 2010

MOTION FOR RULE ON CLERK,  
TREATED AS MOTION FOR BELATED  
APPEAL

GRANTED.

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**PER CURIAM**

Appellant, Terry Pennister, by and through his attorney, Dennis R. Molock, has filed a motion for rule on clerk, which we will treat as a motion for belated appeal.

On September 24, 2009, Arkansas County Circuit Judge David G. Henry filed a letter opinion (dated September 3, 2009) denying Appellant's motion to suppress. Appellant entered a conditional plea of guilty to theft of property on September 10, 2009, for which he was sentenced to 120 months' incarceration. The judgment and commitment order was filed on September 15, 2009. On February 17, 2010, a motion for belated appeal was filed in the circuit court of Arkansas County, Southern District. The circuit court entered an order allowing the belated appeal on the same date and directed that the record be prepared at the State's expense. Appellant's notice of appeal and designation of record was filed in the circuit court on February 17, 2010.

Cite as 2010 Ark. 321

Appellant's notice of appeal and designation of record states that the appeal stems from the order filed on September 15, 2009. An appellant has thirty (30) days from the judgment and commitment order to file a notice of appeal. Ark. R. App. P.–Crim. 2(a)(2); *Turner v. State*, 2010 Ark. 281 (per curiam). Relief from the failure to perfect an appeal is provided as part of the appellate process granting the right to an appeal. *Turner, supra.*; *McDonald v. State*, 356 Ark. 106, 146 S.W.3d 883 (2004). Pursuant to *McDonald*, when an attorney candidly admits fault for failing to timely file a notice of appeal, the motion for rule on clerk is treated as a motion for belated appeal and granted. *Turner, supra.*

In the present case, Dennis R. Molock candidly admits that the failure to timely file the notice of appeal was his error. Thus, Ark. R. App. P.–Crim. 2(a)(2) and *McDonald* allow the appeal to proceed despite the failure to comply with Ark. R. Crim. P. 27.2(c). A copy of this per curiam will be forwarded to the Arkansas Supreme Court Committee on Professional Conduct.

Motion for rule on clerk treated as motion for belated appeal; granted.

We direct the clerk to file the record.