

Cite as 2009 Ark. 95
SUPREME COURT OF ARKANSAS
No. CR 09-99

SHANNON DAVID RAY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered February 26, 2009

MOTION FOR RULE ON CLERK.

GRANTED.

PER CURIAM

Appellant, Shannon David Ray, by and through his attorney, Winston C. Mathis, has filed a motion for rule on clerk. The clerk refused to docket his appeal and would not accept the record due to a failure to comply with Arkansas Rule of Appellate Procedure—Civil 5(b)(1)(C) in that the record does not reflect that all parties have had an opportunity to be heard on appellant’s motions to extend time for filing the transcript.

In *McDonald v. State*, 356 Ark. 106, 146 S.W.3d 883 (2004), this court clarified our treatment of motions for belated appeals and motions for rule clerk. 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 there is good reason the appeal was not perfected, then the case for good reason can be made in the motion, and this court will decide if good reason is present.

Id. at 116, 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 when he has erred and is responsible for the failure to perfect the appeal. *See id.*

In accordance with *McDonald v. State, supra*, Mr. Mathis has candidly admitted that it was his responsibility to assure compliance with Rule 5(b)(1)(C) and that this was not done. The motion is, therefore, granted. While we note that Mr. Mathis has submitted a copy of his motion for rule on clerk to the Ethics Committee for their review, a copy of this opinion will also be forwarded to the Committee on Professional Conduct.

Motion granted.