

ARKANSAS SUPREME COURT

No. 07-660

REGINALD EARLY
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered September 13, 2007

PRO SE MOTION FOR BELATED
APPEAL [CIRCUIT COURT OF
JEFFERSON COUNTY, CV 2006-713,
HON. ROBERT HOLDEN WYATT, JR.,
JUDGE]

MOTION DENIED.

PER CURIAM

In 1992, Reginald Early, petitioner herein, was found guilty by a jury of aggravated robbery and first-degree murder. He was sentenced to life imprisonment on each charge. We affirmed. *Early v. State*, 315 Ark. 466, 869 S.W.2d 9 (1994). Subsequently, petitioner unsuccessfully sought relief by filing a petition pursuant to Ark. R. Crim. P. 37.1, and two separate petitions to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis. *Early v. State*, CR 99-1113 (Ark. Nov. 18, 1999) (per curiam); *Early v. State*, CR 93-189 (Ark. Nov. 18, 2004) (per curiam); *Early v. State*, CR 93-189 (Ark. Oct. 12, 2006) (per curiam).

In 2006, petitioner filed a petition for writ of habeas corpus in the county in which he was incarcerated. The circuit court dismissed the petition without a hearing on January 10, 2007. Petitioner filed a notice of appeal more than thirty days after entry of the final order.

Pursuant to Ark. R. App. P.–Crim. 2(e), petitioner has filed a pro se motion for belated appeal. A petitioner has the right to appeal a ruling on a petition for postconviction relief, which

includes the dismissal of a petition for writ of habeas corpus. *See Scott v. State*, 281 Ark. 436, 664 S.W.2d 475 (1984) (per curiam). However, along with that right goes the responsibility to file a timely notice of appeal within thirty days of the date the order was entered in accordance with Ark. R. App. P.–Civ. 4(a). If a petitioner fails to timely file a 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).

In the instant matter, petitioner claims that he mailed the notice of appeal on January 31, 2007, which was twenty-one days after entry of the final order. He maintains that he placed the notice of the appeal in the mail in sufficient time for the clerk to receive and timely file the notice. Therefore, petitioner argues that through no fault of his own, the notice of appeal was filed on February 20, 2007, more than thirty days after entry of the order. In support of his argument, petitioner attached an Arkansas Department of Correction request for funds to mail the notice of appeal. The request was dated January 31, 2007.

Here, appellant has shown no good cause for his failure to comply with our procedure. When proceeding pro se, this court has specifically held that it is not the responsibility of the circuit clerk, circuit court, or anyone other than the *petitioner* to perfect an appeal. *Sullivan v. State*, 301 Ark. 352, 784 S.W.2d 155 (1990) (per curiam). An item tendered to a court is considered tendered on the date it is received and file marked by the clerk, not on the date it may have been placed in the mail. Ark. R. Civ. P. 5(c). The litigant who claims to have mailed an item has the burden of proving that the circuit clerk received the item by the date it was due to be filed. *Leavy v. Norris*, 324 Ark. 346, 920 S.W.2d 842 (1996) (per curiam). While petitioner may have requested funds to mail the notice of appeal on a certain date, there is no indication that the notice of appeal was actually mailed on that

date, or received by the clerk in a timely manner. Petitioner was nevertheless solely responsible for timely filing his notice of appeal with the clerk.

Petitioner also claims that the “mailbox rule” should apply in his situation, and his notice of appeal be deemed timely filed. He cites *Houston v. Lack*, 487 U.S. 266 (1988), as authority to apply the mailbox rule to his case. The mailbox rule provides that a pro se inmate files his or her petition at the time the petition is placed in the hands of prison officials for mailing, and is accepted in some courts. This court has previously declined to adopt the mailbox rule. *Hamel v. State*, 338 Ark. 769, 1 S.W.3d 434 (1999). We again decline the invitation to do so now.

Motion for belated appeal denied.