

SUPREME COURT OF ARKANSAS

No. CR 09-390

JEFFERY MOSS,

APPELLANT,

VS.

STATE OF ARKANSAS,

APPELLEE,

Opinion Delivered MAY 14, 2009

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS AND FOR
APPOINTMENT OF COUNSEL;
MOTION FOR BELATED APPEAL

MOTIONS GRANTED.

PER CURIAM

Appellant Jeffrey Moss has filed simultaneous motions, one seeking to file a belated appeal and the other seeking leave to proceed in forma pauperis and for appointment of counsel. Moss was convicted of one count of rape and sentenced to a term of 120 months' imprisonment. A timely notice of appeal was filed on January 14, 2008, but Moss's appeal was never perfected. Scott Adams, who represented Moss at trial, has filed an affidavit admitting fault for failing to perfect the appeal.

This court clarified its treatment of motions for rule on clerk and motions for belated appeals in *McDonald v. State*, 356 Ark. 106, 146 S.W.3d 883 (2004). There we said:

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 that there is good reason the appeal was not perfected, the case for good reason can be made in the motion, and this court will decide whether 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 where he or she has erred and is responsible for the failure to perfect the appeal. *See id.* When it is plain from the motion, affidavits, and record that relief is proper under either rule based on error or good reason, the relief will be granted. *See id.* If there is attorney error, a copy of the opinion will be forwarded to the Committee on Professional Conduct. *See id.*

It is plain from the record that Mr. Adams was at fault for failing to perfect Moss's appeal. Pursuant to *McDonald*, we grant the motion for belated appeal and relieve Mr. Adams as counsel of record for Moss. Furthermore, pursuant to Ark. R. App. P.–Crim. 16, Craig Lambert is hereby appointed to represent Moss as he pursues his appeal. Finally, Moss contends that he is indigent and an affidavit in support of his request to proceed in forma pauperis is attached to the motion. As the State has not contested that assertion, we grant the motion to proceed in forma pauperis. A copy of this opinion shall be forwarded to the Committee on Professional Conduct.

Motion for belated appeal granted; motion for leave to proceed in forma pauperis and for appointment of counsel granted.