

ARKANSAS SUPREME COURT

No. CR 07-835

LEVESTER GILLARD
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered October 25, 2007

PRO SE MOTION FOR RULE ON
CLERK OR BELATED APPEAL
[CIRCUIT COURT OF HOWARD
COUNTY, CR 2004-73, HON.
CHARLES YEARGAN, JUDGE]

MOTION TREATED AS MOTION FOR
RULE ON CLERK AND DENIED.

PER CURIAM

In 2005, petitioner Levester Gillard was found guilty by a jury of rape and sentenced as a habitual offender to life imprisonment. We affirmed. *Gillard v. State*, 366 Ark. 217, ___ S.W.3d ___ (2006).

Petitioner subsequently filed in the trial court a timely pro se petition for relief pursuant to Criminal Procedure Rule 37.1, contending that the judgment of conviction should be vacated. The petition was denied on November 15, 2006. Petitioner timely filed a notice of appeal from the order on November 27, 2006, but the record on appeal to this court was not tendered within ninety days of the date of the notice of appeal as required by Ark. R. App.-Civil 5(a). On August 13, 2007, a partial certified record of the lower court proceedings was received and the instant pro se motion was filed in which petitioner seeks leave to lodge the record belatedly and proceed with an appeal of the order. As the notice of appeal was timely filed, we treat the motion as a motion for rule on clerk. *See Johnson v. State*, 342 Ark. 709, 30 S.W.3d 715 (2000) (per curiam); *see also Muhammed v.*

State, 330 Ark. 759, 957 S.W.2d 692 (1997) (per curiam). Petitioner asserts that he should be permitted to lodge the record belatedly because the circuit clerk failed to lodge the record in a timely manner.

A petitioner has the right to appeal a ruling on a petition for postconviction relief. *Scott v. State*, 281 Ark. 436, 664 S.W.2d 475 (1984) (per curiam). With that right, however, goes the responsibility to file a timely notice of appeal and tender the record here within the time limits set by the rules of procedure. If a petitioner fails to tender the record in a timely fashion, the burden is on the petitioner to make a showing of good cause for the failure to comply with proper procedure. *See Garner v. State*, 293 Ark. 309, 737 S.W.2d 637 (1987) (per curiam). The fact that a petitioner is proceeding pro se does not in itself constitute good cause for the failure to conform to the prevailing rules of procedure. *Walker v. State*, 283 Ark. 339, 676 S.W.2d 460 (1984) (per curiam); *Thompson v. State*, 280 Ark. 163, 655 S.W.2d 424 (1983) (per curiam); *see also Sullivan v. State*, 301 Ark. 352, 784 S.W.2d 155 (1990) (per curiam).

The purpose of the rule setting time limitations on lodging a record is to eliminate unnecessary delay in the docketing of appeals. We have made it abundantly clear that we expect compliance with the rule so that appeals will proceed as expeditiously as possible. *Jacobs v. State*, 321 Ark. 561, 906 S.W.2d 670 (1995) (per curiam) (citing *Alexander v. Beaumont*, 275 Ark. 357, 629 S.W.2d 300 (1982) (per curiam)). It is not the responsibility of the circuit clerk, or anyone other than the pro se party desiring to appeal, to perfect the appeal. *See Sullivan, supra*. The pro se litigant receives no special consideration on appeal and bears the burden of conforming to the prevailing rules of procedure. *Elliott v. State*, 342 Ark. 237, 27 S.W.3d 432 (2000); *see Gibson v. State*, 298 Ark. 43, 764 S.W.2d 617 (1989). He or she may not shift that burden to the circuit clerk.

As it was the duty of the petitioner to tender the record to this court in a timely manner, and he has not established good cause for his failure to do so, the motion to proceed with the appeal is denied.

Motion treated as motion for rule on clerk and denied.

Brown, J., not participating.