

# ARKANSAS SUPREME COURT

No. 07-375

EUGENE WESLEY  
Petitioner

v.

STATE OF ARKANSAS  
Respondent

Opinion Delivered May 10, 2007

PRO SE MOTION FOR BELATED  
APPEAL [CIRCUIT COURT OF  
JEFFERSON COUNTY, CV 2006-547,  
HON. ROBERT H. WYATT, JR.,  
JUDGE]

MOTION TREATED AS MOTION FOR  
RULE ON CLERK AND DENIED.

## PER CURIAM

In 2006, petitioner Eugene Wesley, who is incarcerated in the Arkansas Department of Correction by virtue of several criminal convictions, filed in the circuit court in the county where he was incarcerated a pro se petition for writ of habeas corpus. The petition was denied on August 30, 2006. Petitioner timely filed a notice of appeal from the order on September 21, 2006, but he did not tender the record to this court within ninety days of the date of the notice of appeal as required by Ark. R. App.-Civil 5(a). On April 11, 2007, petitioner submitted a partial certified record of the lower court proceedings and filed the instant motion seeking leave to lodge the record belatedly and proceed with an appeal of the August 30, 2006, 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).

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).

Petitioner here asserts that he should be permitted to lodge the record belatedly because the circuit clerk did not inform him until November 9, 2006, that the record would not be prepared until he tendered the fee for the record. Petitioner does not contend that he filed a motion to proceed in forma pauperis in circuit court, and the partial record tendered by petitioner with the instant motion does not contain such a motion or any order pertaining to a request to proceed as an indigent. A petitioner who is unable to afford the fee for an appeal record may seek leave from the circuit court by motion to proceed in forma pauperis. If the motion is denied, he or she may appeal from the order. The filing of a motion for belated appeal in this court is not a substitute for seeking to proceed as an indigent below or for an appeal from an order that denied indigent status.

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 for belated appeal treated as motion for rule on clerk and denied.