

ARKANSAS SUPREME COURT

No. CR 08-470

CHARLES EARL JARRETT
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered

PRO SE MOTION TO LODGE APPEAL
OR FOR A WRIT OF MANDAMUS,
FOR APPOINTMENT OF COUNSEL
AND FOR EXTENSION OF BRIEF
TIME [CIRCUIT COURT OF DESHA
COUNTY, CR 2006-139, HON. SAM
POPE, JUDGE]

MOTION TREATED AS MOTION FOR
RULE ON CLERK AND DENIED IN
PART AND MOOT IN PART.

PER CURIAM

In 2007, petitioner Charles Earl Jarrett, who is also known as Charley Earl Jarrett, was found guilty by a jury of rape and sentenced to life imprisonment. Petitioner, who waived counsel and represented himself at the criminal trial, then timely filed a pro se notice of appeal from the original judgment entered on June 7, 2007.¹

When the record on appeal was tendered to this court, the clerk refused to docket the appeal because the tender was untimely. Now before us is petitioner's pro se motion to lodge the record in the appeal belatedly or for a writ of mandamus, for appointment of counsel on appeal and for an extension of time in which to file petitioner's brief-in-chief. As the notice of appeal was timely filed, we treat the motion as a motion for rule on clerk seeking to belatedly lodge the record on appeal. *Johnson v. State*, 342 Ark. 709, 30 S.W.3d 715 (2000) (per curiam).

¹On August 8, 2007, an amended judgment was entered. Petitioner did not file an amended notice of appeal from the amended judgment.

All litigants, including those who proceed pro se, must bear responsibility for conforming to the rules of procedure or demonstrating good cause for not doing so. *Gibson v. State*, 298 Ark. 43, 764 S.W.2d 617 (1989). If a petitioner fails to tender the record in an appeal 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. *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).

The time in which a record on appeal must be lodged is governed by Ark. R. App. P.–Civ. 5(b) and made applicable to criminal cases by Ark. R. App. P.–Crim. 4(a). The time to lodge the record can be extended from the initial period of ninety days to seven months from the date of the entry of the judgment. Here, petitioner filed a motion to extend the time for filing the record on appeal for the entire seven-month period, and the trial court granted the extension for the time requested. The order was entered prior to the expiration of the initial ninety-day period and met all requirements set forth in Civil Appellate Rule 5(b). However, the order was entered after the amended judgment was entered but the order did not specify from which judgment the seven-month extension period ran. As petitioner filed a notice of appeal to the original judgment only, the date of that judgment will be utilized to calculate the expiration of the seven-month period.

The original judgment was entered on June 7, 2007, making January 7, 2008, the final date for lodging the record on appeal in this court under the seven-month extension. The record was tendered to our clerk on February 8, 2008, returned as untimely and tendered again on April 17, 2008, along with the instant motion.

Petitioner argues that there is good cause to permit the appeal to be lodged because the circuit clerk failed to timely transmit the record on appeal to this court. However, when proceeding pro se, 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). Moreover, the record contains several pieces of correspondence between the trial court and petitioner, and between the court reporter and petitioner, in which petitioner was reminded that it was his responsibility to lodge the appeal record with this court. Petitioner has stated no good reason for the late tender of the record, thereby making the requests for appointment of counsel and extension of brief time moot.

Motion treated as motion for rule on clerk and denied in part and moot in part.