

Cite as 2011 Ark. 214

**SUPREME COURT OF ARKANSAS**

No. CR11-406

WILLIAM MACK EUBANKS,  
PETITIONER

VS.

STATE OF ARKANSAS,  
RESPONDENT**Opinion Delivered** May 12, 2011

MOTION FOR BELATED APPEAL

MOTION TREATED AS MOTION  
FOR RULE ON CLERK AND  
GRANTED.**PER CURIAM**

Petitioner William Mack Eubanks, by and through his attorney, John Wesley Hall, has filed a motion for belated appeal. We affirmed his conviction and sentence in *Eubanks v. State*, 2009 Ark. 170, 303 S.W.3d 450. On November 3, 2010, the circuit court entered a letter order denying petitioner's request for postconviction relief, and petitioner timely filed his notice of appeal on November 24, 2010. Petitioner's attorney states in the motion that the record was tendered late due to a mistake on his part. Thus, we treat his motion for belated appeal as a motion for rule on clerk. *Carroll v. State*, 2010 Ark. 33 (per curiam).

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). In that case, we said that there are only two possible reasons for an appeal not being timely perfected: either the party or attorney filing the appeal is at fault, or, there is "good reason." 356 Ark. at 116, 146 S.W.3d at 891. We explained:

Cite as 2011 Ark. 214

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.*, 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.*

In accordance with *McDonald, supra*, petitioner's counsel has candidly admitted fault. The motion is, therefore, granted. A copy of this opinion will be forwarded to the Committee on Professional Conduct.

Motion for belated appeal treated as motion for rule on clerk and granted.