

## SUPREME COURT OF ARKANSAS

No. 13-119

TIMOTHY ELLIS McDANIEL  
PETITIONER

v.

RAY HOBBS, DIRECTOR,  
ARKANSAS DEPARTMENT OF  
CORRECTION  
RESPONDENT**Opinion Delivered** March 7, 2013PRO SE MOTION FOR BELATED  
APPEAL OF ORDER [JEFFERSON  
COUNTY CIRCUIT COURT, CV 12-  
206, HON. JODI RAINES DENNIS,  
JUDGE]MOTION DENIED.**PER CURIAM**

In 2012, petitioner Timothy Ellis McDaniel filed a pro se petition for writ of habeas corpus in the circuit court in Jefferson County where he was incarcerated.<sup>1</sup> The circuit court dismissed the petition on May 31, 2012, and petitioner sought reconsideration. The motion for reconsideration was denied on July 31, 2012. Petitioner did not timely file a notice of appeal from either order, and he now seeks leave to proceed with a belated appeal.

Arkansas Rule of Appellate Procedure—Civil 4(a) (2012) requires that a notice of appeal be filed within thirty days of the date an order is entered. Petitioner contends that he mailed a notice of appeal to the circuit clerk eighteen days after the motion for reconsideration was denied, but the notice was never filed by the clerk. He further states that, after he learned that the first notice of appeal had not been filed, he mailed a second notice of appeal to the circuit

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<sup>1</sup>As of the date of this opinion, appellant remains incarcerated at the prison facility in Jefferson County.

clerk approximately four months after the motion was denied, which was returned unfiled because it did not bear an original signature. Shortly thereafter, he mailed a third notice to the clerk, which was filed on December 4, 2012. Petitioner asserts that he should be permitted to proceed with a belated appeal because, through no fault of his own, he was required to rely on the prison mail room to post the first notice that was not received by the circuit clerk.

A petitioner has the right to appeal a ruling on a petition for postconviction relief, which includes the denial of a petition for writ of habeas corpus. *Wesley v. Harmon*, 2010 Ark. 21 (per curiam); *McClain v. Norris*, 2009 Ark. 428 (per curiam); see *Scott v. State*, 281 Ark. 436, 664 S.W.2d 475 (1984) (per curiam). If the petitioner fails to file a timely notice of appeal, a belated appeal will not be allowed absent a showing by the petitioner of good cause for the failure to comply with proper procedure. *Wesley*, 2010 Ark. 21; *Garner v. State*, 293 Ark. 309, 737 S.W.2d 637 (1987) (per curiam).

This court has consistently held that the burden to conform to procedural rules applies even where the petitioner proceeds pro se, as *all* litigants must bear the responsibility for conforming to the rules of procedure or demonstrating good cause for not so conforming. *Smith v. State*, 2011 Ark. 367 (per curiam); *Ross v. State*, 2011 Ark. 270 (per curiam); *Wright v. State*, 2010 Ark. 474 (per curiam); *Cummings v. State*, 2010 Ark. 123 (per curiam); *Hale v. State*, 2010 Ark. 17 (per curiam) (citing *Daniels v. State*, 2009 Ark. 607 (per curiam)); see also *Peterson v. State*, 289 Ark. 452, 711 S.W.2d 830 (1986) (per curiam); *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). The pro se appellant receives no special consideration on appeal. *Watkins v. State*, 2010 Ark. 156, 362 S.W.3d 910 (per curiam). If this court were to accept an appeal with a late notice of appeal merely because an incarcerated appellant could point to some difficulty in complying with procedural requirements caused by his or her incarceration, there would be little use in promulgating procedural rules, as an appellant could simply bypass the rules by claiming the burden of incarceration. See *Smith*, 2011 Ark. 367; see also *Garner*, 293 Ark. 309, 737 S.W.2d 637.

While an incarcerated petitioner may face certain obstacles in conforming to procedural rules, we take judicial notice that appeals from postconviction orders are frequently lodged in this court by incarcerated persons. The fact that those appeals are perfected by persons who also may be assumed to face certain hurdles occasioned by their incarceration suggests that the thirty days to file a notice of appeal is not unduly burdensome. By his own admission, petitioner had approximately three weeks to submit his notice of appeal to the circuit clerk. It was not necessary that a particular printed form be used for the notice. The records in many of the pro se postconviction appeals lodged with this court contain a handwritten notice of appeal. We have made it abundantly clear that we expect compliance with the rules of this court so that appeals will proceed as expeditiously as possible. *Smith*, 2011 Ark. 367; *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)).

To the extent that the motion can be considered as arguing that the first notice of appeal should have been considered filed when it was mailed in the prison mail room, the

argument is unavailing. This court has never adopted the “prison mailbox rule,” wherein an item is considered filed when placed in the prison mail room. See *Davis v. State*, 2012 Ark. 340 (per curiam); see also *Ester v. State*, 2009 Ark. 442 (per curiam) (citing *Hamel v. State*, 338 Ark. 769, 1 S.W.3d 434 (1999)). An item tendered to a court is considered filed on the date it is received by the clerk, not on the date it may have been placed in the mail. *Davis*, 2012 Ark. 340.

It is not the responsibility of the circuit clerk, or anyone other than the party desiring to appeal, to perfect the appeal. *Smith*, 2011 Ark. 367; *Ester*, 2009 Ark. 442; *Marshall v. State*, 2009 Ark. 420 (per curiam). As it was the duty of petitioner to file a timely notice of appeal, and he has not established good cause for his failure to do so, the motion to proceed with the appeal is denied.

Motion denied.

*Timothy Ellis McDaniel*, pro se petitioner.

No response.