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SUPREME COURT OF ARKANSAS
No. CR-17-806

CARL DEWAYNE PRINCE
PETITIONER

V.

STATE OF ARKANSAS
RESPONDENT

Opinion Delivered: May 24, 2018

MOTION FOR BELATED APPEAL
[SEBASTIAN COUNTY CIRCUIT
COURT, FORT SMITH DISTRICT, NO.
66FCR-89-187]

MOTION DENIED.

RHONDA K. WOOD, Associate Justice

Now before the court is petitioner Carl Dewayne Prince's pro se motion to proceed with a belated appeal, which had been previously remanded to the Sebastian County Circuit Court for an evidentiary hearing. On remand, we directed the circuit court to hold a hearing to determine the date and time the circuit clerk received the notice of appeal and to return a supplemental record of that hearing to this court.

On March 16, 2018, the circuit court conducted said hearing regarding the timeliness of Prince's appeal of the denial of his petition to correct an illegal sentence. Prince had filed his petition on July 12, 2017, and the circuit court denied it on July 17, 2017. The notice of appeal was filed marked on August 23, 2017, which made it untimely. Prince's motion for belated appeal contended that the previously lodged record indicated that he mailed one envelope that contained three pleadings: a notice of appeal, a petition

to proceed in forma pauperis, and an affidavit in support of request to proceed in forma pauperis. Prince questioned when the circuit clerk's office received the pleadings; the date and time they were file marked; and any reason for a delay between the receipt of the pleadings and the file marking of the individual pleadings. Out of an abundance of caution, we remanded to allow Prince an evidentiary hearing to address these concerns.

Upon remand, the court administrator testified she contacted Arkansas Department of Corrections to arrange for Prince's attendance at the hearing. She discovered he was paroled in January of 2018. She subsequently contacted Parole and Probation only to also discover he absconded in January of 2018 and his whereabouts were unknown. Evidence of his status as "wanted absconder" was admitted into the record. The court then called the circuit clerk, Tyanna Caldwell, to the stand and asked if she knew the date and time Prince's notice of appeal was received, she responded, "It was file marked [on] August 23rd, 2017[,] at 4:34 p.m."

Because there remains nothing to contradict the date stamp on the notice of appeal, it was untimely. Prince makes no effort to demonstrate good cause for the delay.

Motion denied.