

Cite as 2009 Ark. 428

ARKANSAS SUPREME COURT

No. 09-554

WINDELL McCLAIN a/k/a SEIYID
JIHAD MATEEN
Petitioner

v.

LARRY NORRIS, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION
Respondent

Opinion Delivered September 17, 2009

PRO SE MOTION FOR BELATED
APPEAL [CIRCUIT COURT OF
CHICOT COUNTY, CV 2008-127, HON.
DON E. GLOVER, JUDGE]

MOTION DENIED.

PER CURIAM

On August 28, 2008, petitioner Windell McClain, who is also known as Seiyid Jihad Mateen, filed a pro se petition for writ of habeas corpus in the circuit court of the county where he is incarcerated by the Arkansas Department of Correction. The circuit court denied the petition in an order entered on December 15, 2008. Petitioner filed a notice of appeal on March 4, 2009. He then sought to lodge the record in this court, and our clerk declined to accept the record for that purpose because the notice of appeal had not been timely filed in accordance with Rule 4 of the Arkansas Rules of Appellate Procedure–Civil. Petitioner has now filed a motion in which he requests that this court permit the appeal to proceed despite the failure to file a timely notice of appeal.

Rule 4(a) requires a notice of appeal to be filed within thirty days from the entry of the order. Here, petitioner filed his notice of appeal seventy-nine days after the order was entered. In his motion for belated appeal, petitioner asserts that he did not receive prompt notice of the order denying his petition. He attaches a copy of a postmarked envelope and a note that he alleges to have

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been sent from the circuit clerk's staff in support of his claim that he did not receive the order until February 20, 2009. Petitioner additionally would challenge the order, asserting that the presiding judge should have withdrawn from the proceedings. We deny petitioner's motion and do not reach the merits of any claim concerning the merits of an appeal.

A petitioner has the right to appeal a ruling on a petition for postconviction relief, which includes the dismissal of a petition for writ of habeas corpus. *See Scott v. State*, 281 Ark. 436, 664 S.W.2d 475 (1984) (per curiam). If, however, 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. *Garner v. State*, 293 Ark. 309, 737 S.W.2d 637 (1987) (per curiam).

If the order was not promptly forwarded to petitioner after it was entered, it does not provide petitioner good cause for his failure to follow procedure. In contrast to the denial of a petition for postconviction relief under Arkansas Rule of Criminal Procedure 37.1,¹ there is no absolute duty imposed in the statute on a judge or clerk to notify a petitioner that a petition for writ of habeas corpus has been denied.

Our law imposes a duty on lawyers and litigants to exercise reasonable diligence to keep up with the status of their case. *Harris v. Boyd G. Montgomery Testamentary Trust*, 370 Ark. 518, 262 S.W.3d 145 (2007) (per curiam). The pro se litigant receives no special consideration in this regard. *Id.*; *see also Tarry v. State*, 346 Ark. 267, 57 S.W.3d 163 (2001) (per curiam). Petitioner does not demonstrate that he was diligent in inquiring as to the status of his petition filed more than three

¹ Arkansas Rule of Criminal Procedure 37.3(d) places an obligation upon the circuit court to promptly mail a copy of the order to the petitioner.

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months prior to the entry of the order.

Moreover, even if petitioner had been diligent and he had not received notice of the order, Rule 4(b)(3) permits the circuit court, under certain circumstances, to provide an extension of time in which notice of appeal may be filed. The record here does not indicate, and petitioner does not allege, that he sought such an extension of time.

Petitioner has stated no good cause for the failure to comply with our rules of procedure. Accordingly, we deny his motion.

Motion denied.