

Cite as 2009 Ark. 420

**ARKANSAS SUPREME COURT**

No. CR 08-1433

JERRY LEE MARSHALL  
Petitioner

v.

STATE OF ARKANSAS  
Respondent

**Opinion Delivered** September 17, 2009

PRO SE PETITION FOR WRIT OF  
CERTIORARI [CIRCUIT COURT OF  
CLEVELAND COUNTY, CR 2006-44,  
HON. LARRY CHANDLER, JUDGE]

PETITION TREATED AS MOTION  
FOR RULE ON CLERK AND DENIED.

**PER CURIAM**

In 2007, petitioner Jerry Lee Marshall was found guilty by a jury of two counts of being a felon in possession of a firearm. He was sentenced to an aggregate term of 360 months' incarceration, which was to be served consecutive to the aggregate sentence he received for related criminal charges. A \$20,000 fine was also imposed. The Arkansas Court of Appeals affirmed. *Marshall v. State*, CACR 07-1090 (Ark. App. Mar. 19, 2008).

Subsequently, petitioner timely filed in the trial court a verified pro se petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1. The trial court denied the petition in an order entered on May 23, 2008, and petitioner timely filed a notice of appeal from the order on June 4, 2008. He then tendered a record on appeal to our clerk on September 22, 2008, which was 110 days after petitioner filed the notice of appeal. The clerk declined to lodge the record because it was tendered more than ninety days after the date that the notice of appeal was filed, as required by Arkansas Rule of Appellate Procedure—Criminal 4(b).

Now before us is petitioner's pro se petition for writ of certiorari in which he seeks leave to

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lodge the record belatedly and proceed with an appeal of the trial court's order. Because the notice of appeal was timely filed in the trial court, we treat the petition for writ of certiorari as a motion for rule on clerk pursuant to Arkansas Supreme Court Rule 2-2(b) to lodge the record belatedly. *Holland v. State*, 358 Ark. 366, 190 S.W.3d 904 (2004) (per curiam).

All litigants, including those who proceed pro se, must bear the responsibility of conforming to the rules of procedure. *Skinner v. State*, 344 Ark. 184, 40 S.W.3d 269 (2001) (per curiam) (citing *Scott v. State*, 281 Ark. 436, 664 S.W.2d 475 (1984) (per curiam)). 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. *Skinner v. State, supra*. The fact that a petitioner is proceeding pro se does not in itself constitute good cause for the failure to conform to the prevailing procedural rules. *Id.* Furthermore, 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).

In the instant motion, petitioner points out that he filed in the trial court a pro se motion to extend the time in which the record could be filed with this court. He complains that the circuit court clerk failed to send to petitioner an order that granted the motion for extension of time, and that the clerk also sent the appeal record to petitioner late. However, petitioner was solely responsible for ensuring that all the requirements in Appellate Criminal Procedure Rule 4(b) were met. *Id.* He has stated no good cause for his failure to comply with the rules of procedure or to timely lodge the record on appeal.

Petition treated as motion for rule on clerk and denied.