

Cite as 2009 Ark. 510

SUPREME COURT OF ARKANSAS

No. CR09-1068

SHAWN WHITESIDE,

APPELLANT,

VS.

STATE OF ARKANSAS,

APPELLEE,

Opinion Delivered October 22, 2009

MOTION FOR RULE ON CLERK

GRANTED.**PER CURIAM**

Appellant Shawn Whiteside, by and through his attorney, Jonathan Lane, has filed a motion for rule on clerk. Appellant was found guilty by a Lonoke County jury of multiple offenses, and a judgment and commitment order was entered on May 29, 2009. Appellant filed a notice of appeal on June 19, 2009, making the record due in this court by September 17, 2009. Appellant tendered the record here on September 25, 2009, which date counsel concedes was untimely. Now, in seeking this court's leave to file the record, Mr. Lane accepts full responsibility for miscalculating the deadline for filing the record.

This court clarified its treatment of motions for rule on clerk in *McDonald v. State*, 356 Ark. 106, 146 S.W.3d 883 (2004). There, 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." *Id.* at 116, 146 S.W.3d at 891. We explained:

Where an appeal is not timely perfected, either the party or attorney

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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. at 116, 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 has erred and is responsible for the failure to perfect the appeal. See *McDonald*, 356 Ark. 106, 146 S.W.3d 883.

In accordance with *McDonald*, Mr. Lane has candidly admitted fault. The motion is, therefore, granted, and a copy of this opinion will be forwarded to the Committee on Professional Conduct.

Motion for rule on clerk granted.