

SUPREME COURT OF ARKANSAS

No. CR 09-945

LESLIE A. YOUNG
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered November 5, 2009

PRO SE MOTIONS FOR BELATED APPEAL, FOR COPY OR USE OF TRANSCRIPT, AND FOR APPOINTMENT OF COUNSEL [CIRCUIT COURT OF SHARP COUNTY, CR 2006-06, HON. HAROLD S. ERWIN, JUDGE]

MOTION FOR BELATED APPEAL TREATED AS MOTION FOR RULE ON CLERK AND DENIED; MOTIONS FOR COPY OR USE OF TRANSCRIPT AND FOR APPOINTMENT OF COUNSEL MOOT.

PER CURIAM

In 2006, a jury found petitioner Leslie A. Young guilty of capital murder, aggravated robbery, attempted arson, and two counts of theft of property, and sentenced her to an aggregate term of life imprisonment without parole plus 53 years. This court affirmed the judgment in part, but remanded for a new suppression hearing. *Young v. State*, 370 Ark. 147, 257 S.W.3d 870 (2007). We later affirmed the trial court's decision following remand to deny the motion to suppress. *Young v. State*, 373 Ark. 41, 281 S.W.3d 255 (2008). The mandate issued on April 8, 2008.

Petitioner filed in the trial court a petition for postconviction relief under Arkansas Rule of Criminal Procedure 37.1 that was denied by order entered on February 27, 2009. Petitioner filed a notice of appeal on March 23, 2009. On August 24, 2009, petitioner tendered a partial record of the

Rule 37.1 proceedings and filed in this court a motion for belated appeal, seeking to proceed with an appeal of the order denying postconviction relief. Petitioner additionally filed a motion in which she sought a copy of, or access to, the transcript of the hearing on the Rule 37.1 petition. She later filed a motion for appointment of counsel.

Where the notice of appeal was timely,¹ we treat the motion to proceed with the appeal as a motion for rule on clerk to lodge the record rather than a motion for belated appeal. *Ester v. State*, 2009 Ark. 442 (per curiam) (citing *Mitchem v. State*, 374 Ark. 157, 286 S.W.3d 679 (2008) (per curiam)). Because we hold that petitioner has failed to state good cause for failure to conform with our rules of procedure, the motion for rule on clerk is denied and petitioner's remaining motions are moot.

Rule 4(b) of the Arkansas Rules of Appellate Procedure--Criminal requires that the record must be tendered to this court within ninety days of the date of the notice of appeal, unless the circuit court granted an extension of time. Petitioner requests that she be permitted to proceed with her appeal because she has unsuccessfully sought to have the circuit clerk, circuit judge, prison law library supervisor, and the inmate's attorney "designate" the record, because she is entitled to appellate review and her appeal is meritorious, and because she is indigent.

A petitioner has the right to appeal a ruling on a petition for postconviction relief. *Scott v. State*, 281 Ark. 436, 664 S.W.2d 475 (1984) (per curiam). Along with that right, however, goes the responsibility to comply with our rules of procedure. Where the transcript was not filed within the time prescribed under Rule 4(b), this court may only act upon and decide those cases where the movant

¹ Under Rule 2(a)(4) of the Arkansas Rules of Appellate Procedure--Criminal, the notice of appeal must be filed within thirty days of the date of entry of an order denying a petition for postconviction relief such as petitioner filed. Petitioner filed the notice of appeal twenty-four days after the order entered on February 27, 2009.

shows good cause for the omission. Ark. R. App. P.–Crim. 2(e).

Petitioner did not lodge the transcript within the time required and the record does not indicate that any extension was granted. She does not provide in the motion a reason for the delay, and, instead, appears to indicate that others were responsible for lodging the transcript in this court. Petitioner does not demonstrate good cause for the failure to timely file the transcript by placing the blame upon other individuals. It is not the responsibility of the circuit clerk, circuit court, or anyone other than the appellant, to perfect an appeal. *Branning v. State*, 363 Ark. 369, 214 S.W.3d 237 (2005) (per curiam). All litigants, including those who proceed pro se, must bear responsibility for conforming to the rules of procedure or demonstrating a good cause for not doing so. *Marshall v. State*, 2009 Ark. 420 (per curiam); *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); see also *Tarry v. State*, 353 Ark. 158, 114 S.W.3d 161 (2003) (per curiam). We note that indigent, pro se appellants routinely pursue appeals to this court and comply with our rules concerning the lodging of the transcript.

Moreover, it is not clear from the partial record before us that this court could assume jurisdiction over an appeal. The partial record does not demonstrate that petitioner's Rule 37.1 petition was timely filed.

Where the judgment was appealed, Rule 37.2(c) of the Arkansas Rules of Criminal Procedure requires that the petition for postconviction relief must be filed within sixty days of the date the mandate issued. Here, the only petition contained in the record was filed marked on August 20, 2008, indicating that it was filed in the trial court 134 days after the mandate issued. The time limitations imposed in Rule 37.2(c) are jurisdictional in nature, and the circuit court may not grant relief on an untimely

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petition. *Womack v. State*, 368 Ark. 341, 245 S.W.3d 154 (2006) (per curiam).

The trial court found that the petition was timely, but the record before us does not demonstrate that the court could have considered the merits of the petition. A petitioner who seeks relief in this court has the burden to bring up a sufficient record upon which to grant that relief. *See Davidson v. State*, 363 Ark. 86, 210 S.W.3d 887 (2005).

Petitioner has not demonstrated that we would be able to assume jurisdiction over an appeal, even had petitioner demonstrated good cause for her failure to comply with procedure. Because petitioner has not shown cause to grant her motion for rule on clerk, the motions for appointment of counsel and for access to the transcript of the trial court proceedings so that she might pursue an appeal are moot.

Motion for belated appeal treated as motion for rule on clerk and denied; motions for copy or use of transcript and for appointment of counsel moot.