



Cite as 2009 Ark. 96 (unpublished)

ARKANSAS SUPREME COURT

No. CR 08-917

ROGER DALE SIMS
Petitioner

v.

STATE OF ARKANSAS
Respondent

**Opinion Delivered February 26,
2009**

PRO SE MOTION FOR REHEARING
OR CLARIFICATION [CIRCUIT
COURT OF CRAIGHEAD COUNTY,
WESTERN DISTRICT, CR 2001-516,
HON. JOHN N. FOGLEMAN, JUDGE]

MOTION TREATED AS MOTION FOR
RECONSIDERATION AND DENIED.

PER CURIAM

Now before us is a pro se motion for rehearing or clarification of the law pertaining to a decision that we handed down on December 19, 2008, in *Sims v. State*, CR 08-917 (Ark. Dec. 19, 2008) (per curiam). In that decision, we treated petitioner's pro se motion to file pleadings in this court without a certified record as a motion for rule on clerk. In denying the motion for rule on clerk, we held that it was petitioner's responsibility to lodge the necessary record on appeal in order for this court to consider the motions that petitioner tendered to the court.¹

In the instant motion for rehearing or clarification, which we treat as a motion for reconsideration, petitioner maintains that our appellate procedure rules are in conflict with the case law cited in our decision. He cites Arkansas Rule of Appellate Procedure—Criminal 4(c) for the proposition that the circuit court clerk must transmit the record on appeal to this court at

¹Petitioner sought to file in this court pro se motions for belated appeal and for appointment of counsel, and a pro se petition for writ of certiorari.



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the request of the appealing party. Petitioner claims that this rule is in diametric contradiction to the holding in *Sullivan v. State*, 301 Ark. 352, 784 S.W.2d 155 (1990) (per curiam), wherein we stated that the responsibility to perfect an appeal rests solely with a petitioner, not the circuit clerk, circuit court or any other person.

The appellate procedure rule cited by petitioner concerns only the record for the preliminary hearing in this court. As expressly set forth in the rule, such preliminary matters are limited to motions for dismissal or a stay pending appeal, motions for fixing or reduction of bail in a criminal matter, motions to proceed *in forma pauperis*, or motions for any type of intermediate order. Ark. R. App. P.–Crim. 4(c). The relief sought by petitioner did not fit within any of the enumerated categories. As Criminal Appellate Procedure Rule 4(c) has no applicability to petitioner’s matter, there is no conflict between Rule 4(c) and *Sullivan v. State, supra*. Therefore, petitioner has failed to meet his burden of demonstrating that there was some error of fact or law in the decision handed down on December 19, 2008, that would merit reconsideration of the denial of the motion for rule on clerk.

Motion treated as motion for reconsideration and denied.