ARKANSAS SUPREME COURT

No. CR 08-1396

	Opinion Delivered March 5, 2009
ANTONIO DOLPHIN Petitioner	PRO SE MOTION FOR BELATED APPEAL AND RULE ON CLERK [CIRCUIT COURT OF PHILLIPS COUNTY, CR 2003-256, HON. HARVEY YATES, JUDGE]
v.	
STATE OF ARKANSAS Respondent	MOTION TREATED AS MOTION FOR RULE ON CLERK AND DENIED.

PER CURIAM

In 2004, petitioner Antonio Dolphin entered a plea of guilty to murder in the second degree and was sentenced to 168 months' imprisonment. A fine of $175 was also imposed. Petitioner subsequently filed a motion to vacate the plea, which was denied on June 20, 2008.[1] Petitioner timely filed a notice of appeal from the order on July 9, 2008, but he did not tender the record to this court within ninety days of the date of the notice of appeal as required by Arkansas Rule of Appellate Procedure–Civil 5(a). Now before us is petitioner's motion seeking leave to lodge the record belatedly and proceed with an appeal of the June 20, 2008, order. As a notice of appeal was timely filed in the case, we treat the motion as a motion for rule on clerk to lodge the record. *See Johnson v. State*, 342 Ark. 709, 30 S.W.3d 715 (2000) (per curiam); *see also Muhammed v. State*, 330 Ark. 759, 957 S.W.2d 692 (1997) (per curiam). Petitioner asserts that he should be permitted to proceed

[1]The motion to vacate guilty plea was filed in 2004. After petitioner tendered a pro se petition for writ of mandamus to this court in 2008, contending that the motion had not been acted on in a timely fashion, the order was entered disposing of the motion.

with the appeal because the circuit clerk has been uncooperative with him and did not make the certified record available to him to perfect the appeal.

If a pro se petitioner fails to tender the record 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. *See Garner v. State*, 293 Ark. 309, 737 S.W.2d 637 (1987) (per curiam). Proceeding pro se does not in itself constitute good cause for the failure to conform to the prevailing rules of procedure. *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 Sullivan v. State*, 301 Ark. 352, 784 S.W.2d 155 (1990) (per curiam).

The purpose of the rule setting time limitations on lodging a record is to eliminate unnecessary delay in the docketing of appeals. We have made it abundantly clear that we expect compliance with the rule so that appeals will proceed as expeditiously as possible. *Jacobs v. State*, 321 Ark. 561, 906 S.W.2d 670 (1995) (per curiam) (citing *Alexander v. Beaumont*, 275 Ark. 357, 629 S.W.2d 300 (1982) (per curiam)). It is not the responsibility of the circuit clerk, or anyone other than the pro se party desiring to appeal, to perfect the appeal. *See Sullivan v. State*, *supra*. The pro se litigant receives no special consideration on appeal and bears the burden of conforming to the prevailing rules of procedure. *Eliott v. State*, 342 Ark. 237, 27 S.W.3d 432 (2000); s*ee Gibson v. State*, 298 Ark. 43, 764 S.W.2d 617 (1989). He or she may not shift that burden to the circuit clerk. As it was the duty of the petitioner to tender the record to this court in a timely manner, and he has not established good cause for his failure to do so, the motion to proceed with the appeal is denied.

We further note that even if petitioner had stated good cause to grant leave to proceed with the appeal, he could not prevail on appeal inasmuch as the motion to vacate the guilty plea was filed

pursuant to Arkansas Rule of Civil Procedure 60. While Arkansas Rule of Civil Procedure 60(a) allows for a circuit court to modify or vacate a judgment, order, or decree, within ninety days of its having been filed with the clerk, we have emphatically stated that Rule 60(a) does not apply to criminal proceedings. *Ibsen v. Plegge,* 341 Ark. 225, 15 S.W.3d 686 (2000). Nor have we allowed for the application of Arkansas Rule of Civil Procedure 60(c), which allows a court to set aside a judgment more than ninety days after the entry of judgment. *See McArty v. State,* 364 Ark. 517, 221 S.W.3d 332 (2006); *Ibsen v. Plegge, supra.*

This court has consistently held that an appeal from the denial of postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (per curiam); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (per curiam); *Harris v. State*, 318 Ark. 599, 887 S.W.2d 514 (1994) (per curiam); *Reed v. State*, 317 Ark. 286, 878 S.W.2d 376 (1994) (per curiam).

Motion treated as motion for rule on clerk and denied.