

Cite as 2009 Ark. 124 (unpublished)

## ARKANSAS SUPREME COURT

No. CR 08-1468

STACY JOHNINSON  
Petitioner

v.

STATE OF ARKANSAS  
Respondent

**Opinion Delivered** March 5, 2009

PRO SE MOTION FOR BELATED  
APPEAL [CIRCUIT COURT OF  
PULASKI COUNTY, CR 96-1347, HON.  
CHRIS PIAZZA, JUDGE]

MOTION DENIED.

### PER CURIAM

On February 4, 1997, petitioner Stacy Johninson entered a plea of guilty to aggravated robbery and was sentenced to 480 months' imprisonment. On July 1, 2008, petitioner filed in the trial court a pro se motion to vacate the plea, which was denied on July 8, 2008. Petitioner did not timely file a notice of appeal, and he now seeks leave to proceed with a belated appeal from the order pursuant to Arkansas Rule of Appellate Procedure—Crim. 2(e).

Petitioner contends that he should be permitted to proceed with a belated appeal because the notice of appeal was placed in the mailbox where he was incarcerated before the time to file the notice had elapsed. We have held, however, that a pleading or other item tendered to a court is considered tendered on the date it is received by the clerk, not on the date it may have been placed in the mail. *See Hamel v. State*, 338 Ark. 769, 1 S.W.3d 434 (1999) (per curiam).

The petitioner whose pleading is denied has the responsibility to file a timely notice of appeal within thirty days of the date the order was entered in accordance with Arkansas Rule of Appellate



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Procedure—Civ. 4(a). If the petitioner fails to file a timely notice of appeal, a belated appeal will not be allowed absent a showing by the petitioner of good cause for the failure to comply with proper procedure. *Garner v. State*, 293 Ark. 309, 737 S.W.2d 637 (1987) (per curiam). The fact that a petitioner is proceeding pro se in itself does not 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 also Sullivan v. State*, 301 Ark. 352, 784 S.W.2d 155 (1990) (per curiam).

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).



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Motion denied.