

Cite as 2011 Ark. 150

**SUPREME COURT OF ARKANSAS**

No. CR11-254

RONALD DERON GREEN,  
APPELLANT,

VS.

STATE OF ARKANSAS,  
APPELLEE,**Opinion Delivered** April 7, 2011

MOTION FOR RULE ON CLERK

GRANTED.**PER CURIAM**

Appellant Ronald Deron Green appeals from a judgment entered by the Desha County Circuit Court on September 9, 2010, reflecting that he had been found guilty by a jury of delivery of cocaine and sentenced to 900 months' imprisonment. Appellant filed a timely notice of appeal on October 8, 2010:

Ronald Green designates the complete Circuit Court record—including all evidence, transcripts of all hearings and testimony, and all pleadings and rulings filed with the Circuit Clerk as the record on appeal. The transcript has been ordered and financial arrangements have been made with the court reporter as required by Ark. Code Ann. § 16-13-510(c).

On December 20, 2010, appellant tendered the record. However, our clerk's office notified appellant's counsel, Dale West, that volume 4 of the record and the reporter's certificate were absent from the record. On March 11, 2011, West filed a motion for rule on clerk asserting that after he received the notice of deficiencies with the record, he contacted the Desha County Circuit Clerk's Office and was informed that the office had volume 4 of the original

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record and that it would be mailed to him. West asserts in the motion that he never received volume 4 and that he had never had such trouble in obtaining a correct record. He apologized for any delay the situation may have caused.

Pursuant to Ark. R. App. P.–Crim. 4(b), appellant had ninety days from the filing of the notice of appeal to file the record with the clerk of the appellate court. A partial record was tendered within that time period; however, a complete record was not submitted until March 11, 2011, which was beyond the ninety-day period. The responsibility for perfecting an appeal rests solely with the petitioner, not the circuit clerk, the circuit court, or any other person. *See Spurlock v. Riddell*, 373 Ark. 199, 282 S.W.3d 811 (2008) (per curiam); *Sullivan v. State*, 301 Ark. 352, 784 S.W.2d 155 (1990) (per curiam). Here, West should have filed a petition for writ of certiorari to complete the record as authorized by Ark. Sup. Ct. R. 3-5 before the expiration of the ninety-day period.

This court will grant a motion for rule on clerk when the record was not timely lodged due to attorney error. *Rogers v. State*, 353 Ark. 359, 107 S.W.3d 166 (2003) (per curiam). When it is plain from the motion, any affidavits, and the record that relief is proper under our rule based upon attorney error, then relief will be granted. *McDonald v. State*, 356 Ark. 106, 146 S.W.3d 883 (2004). Although West does not admit fault, it is plain from the record that he erred in failing to file a petition for writ of certiorari to complete the record; therefore, we grant the motion for rule on clerk. As the motion is granted based upon attorney error, a copy of this opinion will be forwarded to the Committee on Professional Conduct. *See id.*

Motion granted.