

SUPREME COURT OF ARKANSAS

No. CR-13-431

ARBURY CHARLES BOWERMAN
APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered June 20, 2013

MOTION FOR RULE ON CLERK

GRANTED.**PER CURIAM**

Appellant Arbury Charles Bowerman, by and through his attorney, David L. Moore, has filed a motion for rule on clerk. On October 26, 2012, the circuit court entered a judgment and commitment order. Bowerman timely filed a notice of appeal on November 21, 2012. Pursuant to Arkansas Rule Appellate Procedure—Criminal 4(b) (2012), Bowerman’s record was due by February 20, 2013. On January 24, 2013, Bowerman filed a motion for extension of time to file the record in the circuit court; however the circuit court’s order granting the motion was not filed until March 8, 2013, after the record’s due date. Bowerman’s record is therefore untimely.

This court clarified its treatment of motions for rule on clerk and motions for belated appeals in *McDonald v. State*, 356 Ark. 106, 146 S.W.3d 883 (2004). There, we said that there are only two possible reasons for an appeal not being timely perfected: either the party or attorney filing the appeal is at fault, or, there is “good reason.” 356 Ark. at 116, 146 S.W.3d at 891. We explained:

Where an appeal is not timely perfected, either the party or attorney filing the appeal is at fault, or there is good reason that the appeal was not timely perfected. The party or attorney filing the appeal is therefore faced with two options. First, where the party or attorney filing the appeal is at fault, fault should be admitted by affidavit filed with the motion or in the motion itself. There is no advantage in declining to admit fault where fault exists. Second, where the party or attorney believes that there is good reason the appeal was not perfected, the case for good reason can be made in the motion, and this court will decide whether good reason is present.

Id., 146 S.W.3d at 891 (footnote omitted). While this court no longer requires an affidavit admitting fault before we will consider the motion, an attorney should candidly admit fault where he has erred and is responsible for the failure to perfect the appeal. *See id.* When it is plain from the motion, affidavits, and record that relief is proper under either rule based on error or good reason, the relief will be granted. *See id.* If there is attorney error, a copy of the opinion will be forwarded to the Committee on Professional Conduct. *See id.*

It is plain from the motion and record before us that there was error on Mr. Moore's part in failing to obtain an extension before February 20, 2013. Pursuant to *McDonald, supra*, we grant Bowerman's motion for rule on clerk and forward a copy of this opinion to the Committee on Professional Conduct.

Motion granted.

David L. Moore, for appellant.

No response.