

SUPREME COURT OF ARKANSAS

No. CR 06-425

DETRICK CROSTON
PETITIONER

v.

STATE OF ARKANSAS
RESPONDENT

Opinion Delivered April 26, 2012

PRO SE MOTION FOR RULE ON
CLERK AND PETITION FOR WRIT
OF CERTIORARI [FAULKNER
COUNTY CIRCUIT COURT, CR 2004-
1061]MOTION DENIED; PETITION MOOT.

PER CURIAM

This court previously denied petitioner Detrick Croston's motion for belated appeal of his 2004 conviction for aggravated robbery. *Croston v. State*, CR 06-425 (Ark. May 11, 2006) (unpublished per curiam). Petitioner tendered a subsequent motion for belated appeal of the same case that our clerk declined to file. Petitioner has now filed a motion for rule on clerk, apparently seeking to have the clerk file the tendered motion for belated appeal. He has also filed a petition for writ of certiorari to bring up the record for the appeal. As we deny the motion, the petition for writ of certiorari is moot.

Arkansas Rule of Appellate Procedure—Criminal 2(e) (2011) permits a belated appeal when good cause for the failure to file a notice of appeal is shown. *Johnson v. State*, 2012 Ark. 47 (per curiam). It is incumbent, however, on the petitioner to file the motion for belated appeal within eighteen months from entry of the judgment; that is, the filing period permitted under Rule 2(e). *Gentry v. State*, 2010 Ark. 18 (per curiam). The petition is subject to dismissal if not filed within the time allotted in our rules. *Id.* Petitioner's previous petition for belated appeal

was dismissed on that basis.

When petitioner tendered a subsequent motion for belated appeal, one of our staff attorneys returned the unfiled motion to petitioner, advising him that the clerk had declined to file a second motion for belated appeal in the same case. We have previously held that a petitioner is not entitled to a subsequent motion once relief has been denied. *Hughes v. State*, 284 Ark. 177, 680 S.W.2d 101 (1984) (per curiam). Petitioner then filed this motion for rule on clerk in which he requests that this court permit him to seek a belated appeal.

Petitioner asserts that he has a right to appeal his conviction and that this court should not penalize him when counsel failed to follow procedural rules to preserve his right to appeal. Petitioner avers that counsel, well after the time allotted to pursue a belated appeal, provided an affidavit admitting fault in that regard. This court has recognized that such defective representation is ineffective assistance of counsel, and it has previously granted motions that permitted an appeal to proceed. *See Kinard v. State*, 2012 Ark. 29 (per curiam).

Even where a petitioner has a right to appeal, however, he still has the responsibility to comply with our rules of procedure. *See Nelson v. State*, 2010 Ark. 218 (per curiam). This court will consider a belated appeal under the exceptions in Rule 2(e) only when a petitioner shows good reason for the failure to follow our rules of procedure. *Id.* While petitioner asserts that he is in a position to demonstrate that there was good cause for the failure to comply with the time limitations for filing the notice of appeal, petitioner has not demonstrated that there was good cause for his own failure to comply with the time limitations for filing his pro se motion for belated appeal.

Petitioner knew that his appeal had not been perfected, and he tendered a motion for belated appeal to this court long before his attorney provided him with an affidavit admitting that counsel failed to preserve appellant's right to appeal. In fact, as our opinion denying the motion for belated appeal noted, petitioner first tendered the motion more than two months before the filing deadline, but failed to provide the necessary certified record within the allotted time. *Croston*, CR 06-425. An affidavit was not essential to relief on a timely motion for belated appeal. *See McDonald v. State*, 356 Ark. 106, 146 S.W.3d 883 (2004) (an affidavit admitting fault was no longer required before a motion for rule on clerk or belated appeal will be considered). Petitioner offers no explanation that would provide good cause concerning his failure to file his original motion for belated appeal within the time allotted.

All litigants, including those who proceed pro se, bear the responsibility for conforming to the rules of procedure or demonstrating good cause for not doing so. *Daniels v. State*, 2009 Ark. 607 (per curiam). As we held in *Hughes*, petitioner is not entitled to file a subsequent motion for relief after his original motion for belated appeal was denied. Petitioner has not established good cause to grant an exception to that rule in his case, and our clerk did not err in declining to file the subsequent motion. Accordingly, we deny petitioner's motion for rule on clerk.

Motion denied; petition moot.