

ARKANSAS SUPREME COURT

No. CR 08-99

CHRISTOPHER B. WEST
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered March 6, 2008

PRO SE MOTION FOR RULE ON
CLERK [CIRCUIT COURT OF
PULASKI COUNTY, CR 2006-73, HON.
JOHN LANGSTON, JUDGE]

MOTION FOR RULE ON CLERK
TREATED AS MOTION FOR
BELATED APPEAL AND DENIED.

PER CURIAM

In 2006, petitioner Christopher B. West was found guilty by a jury of robbery, theft of property, and resisting arrest. He was sentenced as a habitual offender to an aggregate term of 480 months' imprisonment. The Arkansas Court of Appeals affirmed. *West v. State*, CACR 06-949 (Ark. App. May 23, 2007). Subsequently, petitioner filed in the trial court a petition for relief pursuant to Ark. R. Crim. P. 37.1. The trial court denied the petition in an order entered on November 21, 2007. Petitioner filed a notice of appeal on December 27, 2007, which was thirty-six days later. A notice of appeal must be filed within thirty days of the final order pursuant to Ark. R. App. P.–Civ. 4(a). The clerk of our court correctly declined to lodge the record on appeal because the notice of appeal was untimely filed.

Now before us is petitioner's pro se motion for rule on clerk under Ark. Sup. Ct. R. 2-2(b) seeking to proceed with the appeal of the November 21, 2007, order. As the notice of appeal filed in the trial court was untimely, we treat the motion for rule on clerk as a motion for belated appeal pursuant to Ark. R. App. P.–Crim. 2(e). 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).

A petitioner has the right to appeal a ruling on a petition for postconviction relief. *See Scott v. State*, 281 Ark. 436, 664 S.W.2d 475 (1984) (per curiam). However, along with that right goes the responsibility to timely file a notice of appeal within thirty days of the date the order was entered. If a petitioner fails to timely file a 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 burden lies with the petitioner to make a showing of good cause for the failure to comply with proper procedure. *Id.*

Here, petitioner contends that he mailed the notice of appeal in a timely manner, alluding to the prison mailbox rule. This court has previously declined to adopt the mailbox rule which provides that a pro se inmate files his or her petition at the time the petition is placed in the hands of prison officials for mailing. *Hamel v. State*, 338 Ark. 769, 1 S.W.3d 434 (1999). An item tendered to a court is considered filed on the date it is file marked by the clerk, not on the date it may have been placed in the mail. *See id.*; Ark. R. App. P.–Civ. 4(a); *see also Leavy v. Norris*, 324 Ark. 346, 920 S.W.2d 842 (1996) (per curiam); *Skaggs v. State*, 287 Ark. 259, 697 S.W.2d 913 (1985) (per curiam).

It was the sole responsibility of petitioner to perfect the appeal. *Sullivan v. State*, 301 Ark. 352, 784 S.W.2d 155 (1990) (per curiam). Petitioner has shown no good cause for his failure to comply with proper procedure.

Motion for rule on clerk treated as motion for belated appeal and denied.