

SUPREME COURT OF ARKANSAS

No. CR 12-08

DEON MARKREGUS NEELY
PETITIONER

V.

STATE OF ARKANSAS
RESPONDENT

Opinion Delivered November 8, 2012

PRO SE MOTION FOR BELATED
APPEAL [PULASKI COUNTY CIRCUIT
COURT, CR 08-4848]

MOTION DENIED.

PER CURIAM

On August 5, 2011, three orders were entered in the Pulaski County Circuit Court disposing of three petitions for postconviction relief filed by petitioner Deon Markregus Neely. Petitioner did not timely file a notice of appeal from the orders, and he now seeks leave to proceed with a belated appeal. Because petitioner has not established good cause for his failure to perfect an appeal in a timely manner, the motion is denied.

Under Rule 2 of the Arkansas Rules of Appellate Procedure–Criminal (2012), as is relevant to this matter, a person desiring to appeal a circuit court’s order must file a proper notice of appeal with the clerk of the circuit court within thirty days of the date that the order is entered. *See* Ark. R. App. P.–Crim. 2(a). If a notice of appeal is not timely filed, this court may still act on an appeal if a good reason for the failure is shown by affidavit. *See* Ark. R. App. P.–Crim. 2(e). However, the burden is on the petitioner to establish good cause for the failure to comply with proper procedure. *Meadows v. State*, 2012 Ark. 374 (per curiam); *Fisher v. State*, 2012 Ark. 238 (per curiam) (citing *Johnson v. State*, 2012 Ark. 47 (per curiam)). This burden applies even where the petitioner proceeds pro se, as all litigants must bear the responsibility for

conforming to the rules of procedure or demonstrating good cause for not so conforming. *Smith v. State*, 2011 Ark. 367 (per curiam); *Ross v. State*, 2011 Ark. 270 (per curiam); *Wright v. State*, 2010 Ark. 474 (per curiam).

Petitioner's proffered reason for his failure to timely file a notice of appeal is that the court's orders did not reach him until six days after the orders had been entered, and, because petitioner is functionally illiterate, he was forced to rely on a "jailhouse lawyer" for legal advice and assistance. Petitioner states that the person who was assisting him with his legal work was transferred to another prison unit, and, thus, petitioner was unable to communicate with the inmate to pursue the appeal.

We have consistently held that it is not the responsibility of anyone other than the petitioner to perfect an appeal. *See Smith*, 2011 Ark. 367 (citing *Wright v. State*, 2010 Ark. 474 (per curiam)); *see also Ester v. State*, 2009 Ark. 442 (per curiam) (citing *Sullivan v. State*, 301 Ark. 352, 784 S.W.2d 155 (1990)). By petitioner's own admission, he had twenty-four days after he received the orders to submit a timely notice of appeal. Ark. R. App. P.–Crim. 2(a). His reliance on a fellow inmate for advice and assistance is not, in itself, good cause to grant a belated appeal. *See Wright*, 2010 Ark. 474 (citing *Bragg v. State*, 297 Ark. 348, 760 S.W.2d 878 (1988)). This court has consistently held that an appellant may not bypass the requirement of filing a timely notice of appeal by simply asserting that he relied on an irresponsible fellow prisoner. *Meadows*, 2012 Ark. 434; *see also Peterson v. State*, 289 Ark. 452, 711 S.W.2d 830 (1986) (per curiam).

Timely appeals from postconviction orders are frequently lodged in this court by incarcerated persons who, like petitioner, also may be assumed to face certain hurdles

occasioned by their incarceration. *Smith*, 2011 Ark. 367; *see also Meadows*, 2012 Ark. 434. If this court were to grant a belated appeal merely because an incarcerated petitioner could point to some difficulty in complying with procedural requirements caused by his incarceration, there would be little use in promulgating procedural rules, as a petitioner could simply bypass the rules by claiming the burden of incarceration or a lack of knowledge of procedure. *See Smith*, 2011 Ark. 367; *Garner v. State*, 293 Ark. 309, 737 S.W.2d 637 (1987) (per curiam). Here, petitioner failed to act to preserve his right to appeal the postconviction orders, and he has not met his burden of demonstrating that there was good cause for his failure to do so.

Motion denied.

Deon Markregus Neely, pro se appellant.

No response.